

EXHIBIT 58

Confidential Pursuant to Protective Order

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF SOUTH CAROLINA
3 CHARLESTON DIVISION
4 IN RE: AQUEOUS)
FILM-FORMING FOAMS)
5 (AFFF) PRODUCTS) MDL NO.
LIABILITY LITIGATION) 2:18-mn-2873-RMG
6 _____)
THIS DOCUMENT RELATES)
7 TO ALL CASES)

8 THURSDAY, AUGUST 19, 2021
9 CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

10 - - -

11 Remote videotaped deposition of 3M
12 Company 30(b)(6) designee Jon Gerber, held
13 remotely at the location of the witness in
14 Cottage Grove, Minnesota, commencing at
15 9:02 a.m. Eastern, on the above date, before
16 Carrie A. Campbell, Registered Diplomat
17 Reporter and Certified Realtime Reporter.

18
19
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21 - - -

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1 VIDEOPGRAPHER: We are now on
2 the record.

3 My name is Vince Rosica. I'm a
4 videographer for Golkow Litigation
5 Services.

6 Today's date is August 19,
7 2021, and the time is 9:02 a.m.

8 This remote video deposition is
9 being held in the matter of Aqueous
10 Film-Forming Foams Products Liability
11 Litigation, MDL number 2873, for the
12 United States District Court for the
13 District of South Carolina, Charleston
14 Division.

15 The deponent is Jon Gerber.

16 All parties to this deposition
17 are appearing remotely and have agreed
18 to the witness being sworn in
19 remotely.

20 Due to the nature of remote
21 reporting, please pause briefly before
22 speaking to ensure all parties are
23 heard completely.

24 Counsel will be noted on the
25 stenographic record.

1 The court reporter is Carrie
2 Campbell and will now swear in the
3 witness.

4
5 JON GERBER,
6 of lawful age, having been first duly sworn
7 to tell the truth, the whole truth and
8 nothing but the truth, deposes and says on
9 behalf of the Plaintiffs, as follows:

10

11 MR. MCWILLIAMS: Good morning,
12 Mr. Gerber. I believe your counsel,
13 Mr. Woods, wanted to say something
14 before we get started.

15 MR. WOODS: Yeah. I just want
16 to make clear for the record we are
17 offering Jon Gerber on certain topics
18 under Federal Rule of Civil Procedure
19 30(b)(6) that have been noticed. I
20 want to make clear what those are.

21 Those topics include the
22 following: We are offering him to
23 discuss the first topic, the nature,
24 extent, substance and timing of 3M's
25 knowledge of 3M's responsibilities

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1 pursuant to TSCA, including, but not
2 limited to, 3M's decision to make its
3 May 15, 1998 report referenced at
4 3M_BELL02796621.

5 We are also offering him on
6 subject number 2, the nature, extent,
7 substance and timing of 3M's knowledge
8 of 3M's response to the February 25,
9 1982 TSCA Interagency Testing
10 Committee notice in the Federal
11 Register, 47 FR 8244.

12 We are offering him on
13 subject 3, 3M's consideration of
14 possible TSCA 8(e) reports in
15 September 1977 and December 1977,
16 including, but not limited to,
17 consideration of extreme persistence
18 and/or widespread presence as
19 referenced at 3M_AFFF_MDL02174898.

20 And finally, we're offering him
21 on Topic 4, all documents discussing,
22 referring, relating and/or -- I'm
23 sorry. That is not correct.

24 Find the right page. Sorry,
25 this is subject 4. The nature,

1 extent, substance and timing of 3M's
2 communications with E.I. Du Pont De
3 Nemours and Company through its
4 officers, directors, and/or employees
5 concerning organic fluorine, PFOA,
6 PFOS, and other per and
7 polyfluoroalkyl substances in the
8 blood of nonoccupationally exposed
9 persons, and TSCA 8(e), including, but
10 not limited to, a meeting in Chicago,
11 Illinois, in August 27, 1979.

12 We're offering him on these
13 topics, subject to the objections that
14 we filed in this case with respect to
15 the notice and the first set of
16 objections entitled "Defendant 3M
17 Company's Responses and Objections to
18 Plaintiffs' Amended Notice of 30(b)(6)
19 Deposition of 3M Regarding Knowledge
20 of Responsibilities and Responses
21 Pursuant to TSCA."

22 I'd like to mark that as
23 Exhibit 3M 1, our objections to that
24 notice, and I will provide a copy of
25 3M 1 to the court reporter.

1 (Gerber 30(b)(6) Exhibit 3M 1
2 and 3M 2 marked for identification.)

3 MR. WOODS: And I'd like to
4 mark as Exhibit 3M 2 defendant 3M
5 Company's responses and objections to
6 plaintiffs' amended notice of 30(b)(6)
7 deposition of 3M regarding knowledge
8 of PFOS, PFOA, and other organic
9 fluorochemicals in nonoccupationally
10 exposed workers.

11 That latter set of objections
12 is dated on July 30, 2021, and that's
13 Exhibit 3M 2.

14 Exhibit 3M 1, just for the
15 record, is dated August 15, 2021.

16 And those objections include,
17 but are not limited to, that the
18 witness, on issues relating to TSCA,
19 is limited to discussing the PFAS
20 chemistry at issue in this litigation,
21 which includes AFFF and the legacy
22 perfluorooctanyl chemistries at issue.

23 So subject to those objections,
24 we're offering this witness.

25 Now, one other thing, Ned. As

1 we've done in the past, and at Judge
2 Gergel's suggestion, we're willing to
3 stipulate that all objections will be
4 preserved, including those as to form
5 and including those as to scope. I
6 just laid out what the scope of this
7 deposition is, so if you're amenable
8 to that, I'll agree to that
9 stipulation.

10 MR. MCWILLIAMS: That sounds
11 good. We agree.

12 MR. WOODS: Okay. I think
13 that's all I have on preliminary
14 comments, so you can proceed.

15 MR. MCWILLIAMS: Okay. And,
16 Craig, we got a letter on August 16th
17 that identified 227 items that the
18 witness used to educate themselves on
19 these topics.

20 Is that -- does that sound
21 right?

22 MR. WOODS: I believe that's
23 correct, yes.

24 MR. MCWILLIAMS: And you told
25 us before we went on the record that

1 there was some additional materials
2 he's reviewed.

3 Can you just give me a sense of
4 the volume of those additional
5 materials?

6 MR. WOODS: I believe it's two
7 documents, and I understand that
8 the -- that those documents are going
9 to be sent to you, along with a list
10 of the Bates numbers for those. I
11 don't know the status of that.

12 MR. MCWILLIAMS: No, I'm just
13 curious as to the volume.

14 MR. WOODS: Yeah, it's not a
15 lot. It's not a lot. Just a couple
16 of extra documents.

17 MR. MCWILLIAMS: Great. Thank
18 you.

19 DIRECT EXAMINATION

20 QUESTIONS BY MR. MCWILLIAMS:

21 Q. Good morning, Mr. Gerber. How
22 are you?

23 A. Good morning. I'm well, thank
24 you.

25 Q. Have you ever had your

1 deposition taken before?

2 A. No, I have not.

3 Q. Okay. What is your
4 understanding of why you're here today?

5 A. My understanding is that I am
6 representing the company in this matter and
7 speaking to issues related to the company's
8 understanding of the Toxic Substances Control
9 Act in this matter and how it carried out its
10 obligations there.

11 Q. Okay. So you understand today
12 that the answers you're giving are answers as
13 if they're coming from the company in total,
14 3M, right, not just from you, Mr. Gerber; is
15 that right?

16 A. Yes, I understand that.

17 Q. Okay. And, Mr. Gerber, you
18 also understand that to the extent you have
19 personal knowledge of something, you can also
20 give that testimony as well?

21 A. Yes.

22 Q. Okay. So in that respect, tell
23 us a little bit about who you are.

24 How long have you been at 3M,
25 and what do you do for 3M?

1 A. I started in 3M in the year
2 2000. I was part time as a technical aid at
3 that time working for the stationery and
4 office supplies division.

5 In 2003, I was hired by bulk
6 technical services and contracted to 3M in
7 the corporate toxicology and regulatory
8 services department.

9 In 2004, I was hired back into
10 3M full time in the corporate toxicology and
11 regulatory services department, and I have
12 continued to work there until the present.

13 The department has reorganized
14 and changed -- changed names a few times
15 during that span, so we're currently known as
16 the 3M product stewardship organization.

17 Q. Okay. And what do you do
18 within the product stewardship organization?

19 A. My current primary
20 responsibility is to be the TSCA subject
21 matter expert for 3M.

22 Q. Okay. So do you help 3M make
23 decisions as to whether and when to report
24 certain materials that are learned under
25 TSCA?

1 A. So my -- my responsibilities
2 cover, you know, the full scope of TSCA. One
3 of my specific responsibilities does relate
4 to TSCA Section 8(e) reporting, so I am the
5 program manager for 3M's corporate TSCA 8(e)
6 committee.

7 Q. Okay. And what is your
8 educational background? Do you have any
9 experience or education or degrees in
10 toxicology or risk assessment?

11 A. My bachelor's degree is in
12 chemical engineering, and then I have an MBA
13 and an MS in environmental health from the
14 University of Minnesota. The MS is from the
15 U of M.

16 Q. Gotcha.
17 So tell us, what did you do to
18 prepare for your deposition today?

19 A. I have been reviewing
20 documentation that's been provided to me
21 covering this topic from a span of many years
22 and then meeting with several individuals to
23 review that material.

24 Q. Okay. What individuals did you
25 meet with to review those materials?

1 A. So I've met with individuals
2 from Mayer Brown, so Craig and Jordan and
3 Daniel, and two individuals from Bergeson &
4 Campbell.

5 Q. What are the name of those two
6 individuals?

7 A. Rich Engler and Todd Stedeford.

8 Q. And are those all lawyers?

9 A. Rich and Todd are technical
10 experts at Bergeson & Campbell. I don't
11 believe they're attorneys.

12 Q. Okay. Who selected the doc --
13 I understand that you reviewed 227 documents
14 plus two -- does that sound right? -- in
15 preparing for your deposition today?

16 A. That sounds right to me.

17 Q. And do you know how those
18 documents were selected?

19 A. I don't know specifically how
20 the documents were selected. They were
21 provided to me by Mayer Brown, and my
22 understanding is their intent is to cover the
23 scope of what I need to speak to today.

24 Q. Okay. So if I understand your
25 testimony correctly, you did not select these

1 documents; is that fair?

2 A. That's correct.

3 Q. Did you make any effort to
4 obtain additional documents to help answer
5 any questions you might have while you're
6 preparing for your deposition?

7 A. So I would rely on, you know,
8 my experience with TSCA and my TSCA 8(e)
9 responsibilities outside of the documents
10 that have been provided, but I did not
11 request any additional documentation.

12 Q. Okay. I saw on the list of
13 materials you reviewed two depositions.

14 Does that sound right?

15 A. Yes, that sounds right.

16 Q. And it -- the reference is just
17 a narrow range of pages.

18 Is that -- is that -- are those
19 the pages you read within the deposition, or
20 are those the pages you thought most
21 pertinent, or what's the significance of
22 those pages identified?

23 A. From what I recall, I believe
24 those were the relevant sections to my
25 deposition to be reviewed.

1 Q. Did you read any other sections
2 of those depositions?

3 A. I did not.

4 Q. Okay. Do you know how those
5 few pages within the depositions were
6 selected?

7 A. I don't know specifically. My
8 understanding is that those are the sections
9 that are relevant to the topics that I need
10 to speak to.

11 Q. Okay. But you didn't review
12 the rest of the deposition to confirm whether
13 or not that was an accurate representation?

14 A. I did not review the rest of
15 the deposition.

16 Q. Okay. And when did you begin
17 prepping for this deposition? Approximately
18 how long ago?

19 A. It was mid-July, if I recall
20 correctly.

21 Q. Okay. And can you give us a
22 rough sense of how many hours you spent
23 preparing?

24 A. Oh, it's been dozens of hours.
25 So I've had a series of meetings with the

1 preparation team, and then I've spent a
2 significant amount of time outside of those
3 meetings reading and reviewing the materials
4 that have been provided.

5 Q. Okay. So many dozens of hours.
6 And approximately -- how much
7 this week? Today's Thursday; is that right?

8 A. That's correct.

9 Q. Can you give me a sense of how
10 much time, if any, you've spent on Monday,
11 Tuesday, Wednesday of this week in preparing
12 for this deposition?

13 A. I spent most of this week
14 preparing for this deposition. So, you know,
15 I would estimate, you know, six to eight
16 hours a day.

17 Q. Okay. Are you aware that last
18 week lawyers on our side sent lawyers on your
19 side a list of documents that we intended to
20 ask you about?

21 A. Yes, I'm aware of that.

22 Q. Okay. And did you make an
23 effort to review those documents?

24 A. I did review those as best I
25 could in comparison to the materials that I

1 had already reviewed.

2 Q. Okay. And do you feel like you
3 were able to accomplish that? Were you able
4 to review them to a degree -- to your
5 satisfaction?

6 A. I do feel that I'm prepared to
7 speak to the issues in this deposition today.

8 Q. I'm asking a little bit
9 different question.

10 I believe you're prepared to
11 talk about the issues, but I'm asking: Do
12 you feel like you were able to adequately
13 review the documents that we sent to 3M and
14 3M's lawyers?

15 A. I was not able to review all of
16 those documents in detail, but I believe that
17 I was able to do a sufficient review to -- to
18 testify today.

19 Q. Okay. Do you think that you
20 got through more than half of them? Or
21 90 percent? Do you have any sense of how
22 much of the documents that plaintiffs
23 provided you were able to review?

24 A. My understanding is that there
25 was a pretty good overlap in the materials

1 that I had reviewed in my previous
2 preparation. I don't know that I could put a
3 percentage on that off the top of my head.

4 Q. Okay. All right. So let's
5 keep moving.

6 You understand that 3M made a
7 variety of products using POSF-based
8 chemistries, right?

9 A. Yes, I do.

10 Q. And that included things like
11 Scotchgard stain repellent, right?

12 A. Yes, my understanding is that
13 that's one of the downstream products, and
14 POSF was an intermediate used to manufacture
15 substances that went into those products.

16 Q. Right.

17 And another product was
18 Scotchban, also known as FC-807, which was
19 used as food packaging material; is that
20 right?

21 A. Yes.

22 Q. Okay. And also a product named
23 Light Water, which is an AFFF firefighting
24 foam; is that right?

25 A. Yes.

1 Q. And each of those products have
2 slightly different chemistries, but they all
3 started from POSF; is that right?

4 A. Based on the documents that
5 I've reviewed, that's my understanding, but I
6 am not an expert in this chemistry.

7 Q. I understand.

8 But you do have a degree in
9 chemistry, right?

10 A. In chemical engineering, yes.

11 Q. Yeah. Okay.

12 And you understand, sir, that
13 it's been determined that any of those
14 products, or every product that starts
15 with -- that's a POSF-based chemistry can and
16 will eventually degrade or convert or
17 metabolize into a different chemical, PFOS;
18 is that right?

19 A. And again, you know, the full
20 scope of the chemistry is a bit beyond my
21 experience. I understand from the documents
22 that I've reviewed that some of substances
23 can hydrolyze to PFOS, but I don't -- I can't
24 speak to whether all of them do or not.

25 Q. Okay. But you understand that

1 POSF-based products have been determined to
2 be able to metabolize in organisms to PFOS,
3 right?

4 A. And based on the documents that
5 I've reviewed, I've seen that this -- that
6 POSF can hydrolyze to PFOS.

7 And I understand that, you
8 know, that information is available; I don't
9 know the specifics of metabolic pathways.

10 Q. Let's pull up a document that
11 we provided your lawyers, and let's see if
12 this can refresh your recollection.

13 Let's pull up DL1234, please.

14 (Gerber 30(b)(6) Exhibit DL1234
15 marked for identification.)

16 MR. WOODS: And, Daniel, if you
17 could identify the tab number for the
18 witness? If he wants to look at a
19 hard copy.

20 MR. MCWILLIAMS: And, Joe,
21 maybe every time we pull up a new doc,
22 if you'll call out the Bates number, I
23 think that will help the other side
24 find it more quickly.

25 MR. WOODS: This one's 191 --

1 MR. ROTTENBERG: This is 181,
2 Jon.

3 MR. MCWILLIAMS: Did you hear
4 that, Joe? If you could just call out
5 the Bates stamp, please.

6 JOE WILLS: Sure. So this
7 is -- give me just a moment. So it's
8 3M_AFFF_MDL00019 --

9 MR. MCWILLIAMS: I meant just
10 actually blow it up on the screen.

11 JOE WILLS: Oh, sure, no
12 problem. Much easier on my end.

13 MR. WOODS: This is Tab 181,
14 Jon.

15 THE WITNESS: All right. I
16 have it.

17 QUESTIONS BY MR. MCWILLIAMS:

18 Q. All right. And do you
19 recognize this as one of the documents that
20 we provided you for discussion today?

21 A. Yes.

22 Q. Okay. And do you see that this
23 is a report dated August 1999 talking about
24 sulfonated perfluorochemical release
25 estimation?

1 Do you see that?

2 A. Yes, I do.

3 Q. And this was -- okay. And
4 let's turn, if we would, to Bates stamp page
5 ending in 213, please.

6 (Discussion off the record.)

7 QUESTIONS BY MR. MCWILLIAMS:

8 Q. Do you have that page, sir?

9 A. Yes, I do.

10 Q. And you see this is the
11 Introduction section?

12 A. Yes.

13 Q. If we could blow up that second
14 paragraph, please. It says, "3M has been
15 producing sulfonyl-based FCs for over
16 40 years using the ECF process. The basic
17 building block of these products and the
18 highest production volume of FC manufactured
19 by 3M is POSF."

20 That's the chemical we've been
21 talking about, right, sir?

22 A. That's correct.

23 Q. Okay. It says, "POSF is used
24 to make a diverse variety of FC products."

25 And that's the products we were

1 just talking about, like Light Water,
2 Scotchban and Scotchgard, right?

3 A. Yes, I believe that those are
4 derivatives of POSF.

5 Q. Okay. And it says, "The
6 chemical or enzymatic hydrolysis of POSF
7 results in PFOS."

8 Is that right?

9 A. Yes, I see that written there.

10 Q. And that's what you've been --
11 you just told us about that a couple minutes
12 ago, that you understand that POSF-based
13 products can be exposed to water and then
14 convert into the different chemical, PFOS,
15 right?

16 A. Yes, based on the conditions,
17 yes, it's -- you know, later on in that
18 paragraph it talks about the length of time
19 to ultimate degradation is variable, with
20 some fluoropolymers apparently stable for
21 hundreds of years.

22 Q. Right.

23 It says, "Based on current
24 information from 3M, PFOS and/or its salt is
25 believed to be the ultimate degradation

1 product in the ambient environment of all
2 POSF-based products."

3 Did I read that correctly, sir?

4 A. Yes, you read that correctly.

5 Q. So all 3M products that use
6 this POSF-based chemistries is capable of
7 converting to PFOS in the environment.

8 That's what that sentence
9 means, right?

10 A. That -- that was the current
11 understanding at the time it was written.

12 Again, based on the current
13 state of the science, that's outside of my
14 expertise, so I really can't speak to that.

15 Q. Well, that's what's written on
16 the page in front of you, right?

17 A. Yes, what's written in this
18 report is based on current information from
19 3M. PFOS and/or its salts is believed to be
20 the ultimate degradation product in the
21 ambient environment of all POSF-based
22 products.

23 Q. Right.

24 And if we go to the next
25 paragraph, please, we can look at the very

1 last sentence -- well, actually, let's look
2 at the first sentence.

3 It says, "Because of the
4 stability of PFOS and the ability of PFOS to
5 be a marker for tracing all POSF-based
6 products, these FCs are often described in
7 terms of PFOS equivalents when discussing
8 product volumes and FC release or discharge
9 levels."

10 Did I read that correctly, sir?

11 A. Yes.

12 Q. Okay. And the last sentence in
13 that paragraph says, "PFOS appears to be the
14 end result of both microbial and vertebrate
15 metabolism of POSF-based products."

16 Right?

17 I didn't hear your answer,
18 Mr. Gerber.

19 A. Oh, I'm sorry, I mistakenly
20 muted. I do see that written there.

21 Q. Okay. So the importance here
22 is that these POSF-based products can convert
23 to PFOS both in the environment and in
24 organisms via metabolism, right?

25 A. I see that summarized in this

1 report, that that was the understanding at
2 the time. Again, you know, speaking to the
3 current state of the science in that area is
4 beyond my area of expertise.

5 Q. Okay. But you have no reason
6 to think that the science has changed and
7 that this is incorrect, do you?

8 A. I -- in the documents that I've
9 reviewed, I have not reviewed any documents
10 that -- that address that question.

11 Q. Well --

12 A. That would indicate a change in
13 that understanding.

14 Q. Well, sitting here today, you
15 have no reason to think those statements are
16 no longer accurate, do you?

17 A. No, I do not.

18 Q. Okay. And if we could pull up
19 DL1572.

20 And this is just a
21 demonstrative, Craig, to hopefully --

22 MR. WOODS: Okay.

23 (Gerber 30(b)(6) Exhibit DL1572
24 marked for identification.)
25

1 QUESTIONS BY MR. MCWILLIAMS:

2 Q. -- explain what's going on
3 here.

4 So on the left-hand side we
5 have the POSF-based chemistries, right?

6 And then -- and then 3M will
7 add a moiety, I think that's what it's
8 called, at the end of the head group, and
9 then depending on how that's done will
10 determine which product, which 3M product,
11 we're talking about, right?

12 A. That's my general
13 understanding, yes.

14 Q. Okay. And all of those
15 products, according to this document, once
16 they enter the environment or get into an
17 organism, they're capable of metabolizing or
18 degrading to this different chemical, PFOS,
19 right?

20 A. And again, based on this
21 document, that's -- that's the information
22 that's provided here.

23 Q. Okay. Are you familiar with a
24 gentleman named Dr. Geary Olsen?

25 A. Yes, I am.

1 Q. And Dr. Olsen, he's an
2 epidemiologist at 3M; is that right?

3 A. That's correct.

4 Q. Have you reviewed his
5 deposition testimony in this case or any
6 prior case?

7 A. Not that I recall.

8 Q. If Dr. Olsen testified that
9 PFOS in the blood of an organism is evidence
10 of exposure to POSF-based products, would you
11 have any reason to disagree with them?

12 A. No, I would not have reason to
13 disagree with Dr. Olsen.

14 Q. Okay. And do you have any
15 sense of how much POSF 3M manufactured over
16 the 40, 50 years it made that chemical and
17 those products?

18 A. Not over the full production
19 history of that substance. That's not one of
20 the pieces of information that I am prepared
21 to speak to.

22 I do recall reviewing in the
23 Interagency Testing Committee information
24 that was provided that POSF had a production
25 volume in the range of, I believe it was, 1

1 to 10 million pounds per year.

2 (Gerber 30(b)(6) Exhibit DL1056

3 marked for identification.)

4 QUESTIONS BY MR. MCWILLIAMS:

5 Q. Okay. Well, let's pull up
6 DL1056. This was another document I believe
7 we provided to counsel.

8 Do you recognize this chart, or
9 this graph, Mr. Gerber?

10 A. No, I don't think so.

11 Q. Okay. Well, this is a document
12 we obtained from Dr. Olsen's files. And the
13 title here, this is reporting the
14 manufacturing volume of POSF by 3M over time;
15 is that right?

16 A. That's correct.

17 Q. And would you accept my
18 representation that 3M manufactured more than
19 100 million pounds of POSF?

20 A. Yeah, just a -- I guess I'd
21 have to quickly do the math there. But, you
22 know, I see the chart here, and, yeah, the
23 production volumes represented there.

24 Q. Okay. But you see that you're
25 talking 6, 7, 8 million pounds a year for

1 many, many years; is that right?

2 A. Yes, over that span from --
3 looks like, you know, 1 million pounds up to
4 nearly 8 million pounds per year, depending
5 on which year.

6 Q. All right.
7 We're talking for 25 years,
8 right?

9 A. So this chart covers 1975 to,
10 you know, roughly 2003.

11 Q. Right.
12 And do you accept my
13 representation that -- I mean, can you -- do
14 the quick math, if you need to, but do you
15 accept my representation that 3M manufactured
16 more than 100 million pounds of POSF?

17 A. Let's see. Sorry, just give me
18 a minute.

19 So that -- yeah, that looks
20 like the correct ballpark.

21 Q. Now, we were talking about
22 the -- these POSF-based products able to
23 metabolize to PFOS.

24 Do you remember that discussion
25 just a few seconds ago?

1 A. Yes.

2 Q. Okay. And based on your review
3 of the documents that you reviewed to get
4 prepared for today, when did 3M first become
5 aware of that fact, that their POSF-based
6 products would convert into this different
7 chemical, PFOS, once it got into an organism?

8 A. So I'm sorry, could you repeat
9 the question?

10 Q. Yes, sir.

11 When did 3M first become aware
12 that POSF-based products could metabolize to
13 PFOS?

14 A. I -- I'm not sure that I know
15 precisely when the metabolic information
16 was -- was discovered. I do recall seeing in
17 the information provided to the Interagency
18 Testing Committee that the hydrolysis of POSF
19 to PFOS was understood at that time. That
20 was 1982.

21 Q. The hydrolysis is different
22 than metabolism, right? So my question is
23 about metabolism.

24 When did 3M first become aware
25 that their POSF-based products could

1 metabolize to PFOS?

2 A. Based on my review of the
3 documents, I don't think I can give you a
4 precise date. I think the experts in
5 toxicology at 3M would better be able to
6 answer that question.

7 Q. Okay. And if you can't give me
8 a precise date, I understand, but can you
9 give me the decade?

10 A. I'm not sure that I can.

11 Q. Did you review any documents
12 preparing for today's deposition that
13 discussed this exact topic?

14 A. I do recall reviewing documents
15 that spoke about this information in the
16 context of TSCA 8(e) submissions, but off the
17 top of my head, I don't recall the dates
18 associated with those.

19 Q. Would you have any reason to
20 disagree with me that 3M was aware of this
21 information in the 1970s?

22 A. Again, I -- I don't think I can
23 answer that question. I think that's beyond
24 my area of expertise, the understanding of
25 the metabolism of these compounds.

1 Q. Okay. But, sir, you're here
2 today to talk about the May 1998 TSCA 8(e)
3 submission to 3M about PFOS in the blood of
4 the general population, right?

5 A. Yes.

6 Q. And you're aware -- and that's
7 a very short letter, isn't it? Like one and
8 a half pages; is that right?

9 A. Yes, I believe so.

10 Q. And that very short letter
11 specifically mentions what 3M knows about
12 POSF-based products metabolizing to PFOS,
13 right?

14 A. I believe that's correct.

15 Q. Okay. So with that refresher,
16 sitting here today, you can't tell me when 3M
17 became aware of that information?

18 A. I think that that's information
19 that toxicologists could better speak to,
20 their understanding of that information and
21 when that information was obtained.

22 Q. Okay. So you're not prepared
23 to discuss that today, the timing of that
24 knowledge?

25 A. I would be prepared to discuss,

1 you know, 3M's deliberations under TSCA and
2 its evaluation of that information for
3 reportability under Section 8(e).

4 Q. Okay. And you understand
5 that -- we're jumping ahead here, but you
6 understand there's timing requirements
7 associated with TSCA 8(e), right?

8 You have to report information
9 within a certain amount of time upon
10 obtaining that information, right?

11 A. That's correct.

12 Q. Okay. So with that in mind,
13 you can't tell me when 3M obtained this
14 information, that POSF-based products
15 metabolized to PFOS?

16 A. And again, I don't have the
17 precise dates. You know, we may be able to
18 review documents to answer that question more
19 specifically.

20 Q. Okay. So if you're not
21 familiar with when 3M obtained that
22 information, you would be unable to say
23 whether or not 3M was in compliance with TSCA
24 8(e) with respect to that specific
25 information, right?

1 A. No, I don't think that's
2 correct. What I recall from my review of the
3 documents is that information was reviewed by
4 3M as it was obtained and evaluated
5 against -- against EPA's available guidance
6 for reporting under TSCA 8(e).

7 Q. Okay. So in your opinion, did
8 3M timely report that information to EPA?

9 A. And by the "information," are
10 you referring to the metabolism information?

11 Q. Yes, sir.

12 A. So my understanding, based on
13 the documents that I've reviewed and EPA's
14 guidance, is that that metabolism information
15 by itself would not constitute reportable
16 information under TSCA 8(e), that there are
17 other factors that would need to be
18 considered in the company's decision whether
19 that information needed to be reported.

20 Q. Okay. But 3M did, in fact,
21 report that information, right?

22 A. So my understanding is that
23 that information was included in the May 1998
24 submission to EPA.

25 Q. All right. The 8(e)

1 submission, right?

2 A. Yes, that's correct.

3 Q. Okay. All right. Like I said,
4 we jumped ahead of ourselves. Give me a
5 second to get back on -- okay.

6 So we've been talking about
7 this May 1998 letter. Let's pull up this
8 letter. This is DL353.

9 (Gerber 30(b)(6) Exhibit DL353
10 marked for identification.)

11 MR. MCWILLIAMS: And again,
12 Joe, if you would pull up the Bates
13 stamp. You've probably got this
14 memorized by now, right?

15 MR. WOODS: It's Tab 95, Jon.

16 THE WITNESS: All right. Just
17 a second, please.

18 All right. I have that.

19 QUESTIONS BY MR. MCWILLIAMS:

20 Q. Okay. And this is the -- this
21 letter represents the very first time 3M
22 notified the EPA that it had determined that
23 the chemical PFOS was present in the blood of
24 the general population; is that accurate?

25 A. I -- I'm not sure that that's

1 entirely accurate. My understanding, based
2 on the documents that I've reviewed, is that
3 some of this information was in the public
4 literature prior to this. These were new
5 specific findings that 3M was disclosing in
6 this notice.

7 MR. MCWILLIAMS: Okay. Move to
8 strike as nonresponsive. I can see
9 where this is going to go.

10 QUESTIONS BY MR. MCWILLIAMS:

11 Q. But, sir, prior to May 1998,
12 have you seen any document where 3M informed
13 the EPA that PFOS was present in the blood of
14 the general population?

15 A. Based on the documents that
16 I've reviewed, I don't believe that there was
17 a 3M notification associated with general
18 population blood of PFOS specifically.

19 Again, I do recall there being
20 other information in the general literature,
21 published data from 3M on worker exposure,
22 and then, again, the public literature like
23 the Guy and Taves paper that's referenced at
24 the bottom of this document.

25 Q. Okay. So you guys are taking

1 the position now that Guy and Taves'
2 publication informed the EPA that PFOS was
3 present in the blood of the general
4 population?

5 A. I don't think that's what I'm
6 saying. I'm just saying that that
7 information was available in the public
8 literature.

9 My understanding is that that
10 would be information that would be considered
11 to be known to the administrator.

12 Q. Okay. You said "that
13 information was available in the public
14 literature." I'm -- are you saying that
15 there's information in the public literature
16 that states PFOS is present in the blood of
17 the general population?

18 A. So in the case of Guy and
19 Taves, they had identified organic fluorine
20 in certain pooled blood samples. They had
21 done tentative identification of some of
22 those compounds. They had noted that it
23 could be PFOA or the -- or the sulfonic acid
24 of that derivative of that compound, which
25 would be PFOS. But there was still

1 uncertainty about that at the time.

2 Q. Okay. Does the acronym PFOS
3 appear in Guy and Taves?

4 A. Not that I recall based on my
5 review of that document.

6 Q. Does the word "perfluorooctane
7 sulfonate" appear in Guy and Taves?

8 A. Not that I recall, but they do
9 give descriptions of the chemistry that I
10 think would lead people knowledgeable in the
11 chemistry to be able to identify those
12 substances. That -- that's perhaps getting a
13 little bit beyond my area of expertise,
14 though.

15 Q. Okay. So do I hear you
16 correctly that 3M was aware of Guy and Taves
17 in the '70s when it was first published,
18 right?

19 A. Based on the documents that
20 I've reviewed, there -- I have seen
21 discussion of those papers.

22 Q. Okay. And so does that mean
23 that if EPA could have determined that PFOS
24 was present in the blood of the general
25 population based on the Guy and Taves

1 publication, was 3M also aware of that at
2 that same time?

3 A. I'm sorry, can you repeat the
4 question?

5 Q. Yes, sir.

6 If I'm understanding your
7 testimony correctly, you're suggesting
8 that -- you're -- well, strike that. Let me
9 try this again.

10 Sir, when did 3M first become
11 aware that PFOS was present in the blood of
12 the general population?

13 A. You know, I -- I'm not sure I
14 have the full scope of the history on that
15 science. I think 3M's toxicologists,
16 environmental scientists, would probably be
17 able to better speak to that.

18 Based on the documents that
19 I've reviewed, they were aware of the Guy and
20 Taves findings for organic fluorine and then,
21 you know, continued to investigate that over
22 time.

23 Q. So is it your testimony that
24 a -- it's a reasonable interpretation of the
25 Guy and Taves publication to conclude that

1 PFOS was present in the blood of the general
2 population?

3 A. I think that that's beyond my
4 area of expertise to really draw the
5 conclusions from that. I think our
6 toxicologists would better be able to
7 interpret that study and give an informed
8 opinion.

9 Q. But I still need you to try to
10 answer it for me.

11 You've reviewed these
12 documents. You're a smart guy. You've got a
13 chemical engineering degree.

14 Based on your review of the
15 documents, was there -- was 3M aware that
16 PFOS was present in the blood of the general
17 population in the 1970s?

18 A. So my understanding based on
19 the documents that I've reviewed is 3M was
20 aware of the Guy and Taves findings for
21 organic fluorine, and there was, you know,
22 further discussion of those results and
23 investigation into those results.

24 I'm aware of Richard Newmark's
25 memo where he had evaluated the spectra and

1 concluded that the spectra most closely
2 resembled PFOS. But based on, you know, my
3 area of expertise and the documents that I've
4 reviewed, I guess I can't speak to when 3M
5 might have specifically concluded that it was
6 PFOS or that it was present in the blood of
7 the general population.

8 I know some of those specific
9 findings, you know, were reported later in
10 1998 based on, you know, the additional work
11 that 3M had done and significant advances in
12 analytical capability.

13 Q. Okay. Let me try to get back
14 on track here.

15 I believe you answered in
16 the -- in the affirmative, that prior to this
17 May 1998 letter, 3M -- you've not seen any
18 indication that 3M had previously disclosed
19 to the EPA that PFOS was present in the blood
20 of the general population, fair?

21 A. I don't recall seeing a
22 specific notice on that topic.

23 Q. Okay. And is it -- based on
24 your review of the documents in this case,
25 you understand that -- well, strike that.

1 One of the documents I sent you
2 in preparation for today's deposition was a
3 Washington Post article announcing the --
4 3M's decision to phase out POSF-based
5 chemistries.

6 Did you review that document?

7 A. I do recall that document.

8 Q. Okay. And in that document did
9 you see the quote from Dr. Charles Reich of
10 3M?

11 A. Would we be able to pull that
12 document up? I don't recall the quote
13 offhand.

14 Q. But sitting here, do you
15 remember him telling the Washington -- the
16 reporter at the Washington Post that it was a
17 complete surprise to 3M that PFOS was present
18 in the blood of the general population?

19 A. I don't remember the specific
20 quote.

21 Q. Okay. Does that sound
22 generally what the quote was?

23 A. I believe so.

24 Q. Okay. And so are you aware
25 that 3M's website today claims that prior to

1 the 1990s PFOS was undetectable at part per
2 billion concentrations in blood?

3 A. I haven't reviewed that
4 information specifically.

5 Q. You haven't reviewed 3M's
6 website on this topic?

7 A. Not -- not that specific
8 information that I recall.

9 Q. Okay. But is that a true
10 statement, that prior to the 1990s PFOS was
11 nondetectable in the part per billion range
12 prior to the 1990s?

13 A. The analytical capability is
14 really beyond my area of expertise. I would
15 rely on our environmental scientists to, you
16 know, be able to speak to that.

17 My general understanding, based
18 on the documents that I've reviewed, is that
19 there were substantial advances in analytical
20 capability over this time period.

21 Q. Okay. Well, let's go back to
22 this letter. Let's read this. I skipped
23 right over it. This is DL353. And let's
24 read this.

25 This is, again, dated May 15,

1 1998; is that right?

2 A. Yes.

3 Q. And this is a letter signed by
4 Dr. Charles Reich; is that right?

5 A. That's correct.

6 Q. That's the gentleman who told
7 The Washington Post that it was a complete
8 surprise, the presence of PFOS in the blood
9 of the general population, right?

10 A. And again, I don't remember the
11 specific quote, but it -- the same
12 individual.

13 Q. Right. And let's see what he
14 wrote not EPA in 1998.

15 He says, "With this letter, 3M
16 Company is submitting information to the EPA
17 administrator pursuant to Section 8(e) of the
18 Toxic Substances Control Act. As detailed
19 below, this information relates to
20 fluorochemicals, specifically perfluorooctane
21 sulfonate, PFOS, and consists of analysis of
22 blood sera samples showing PFOS at very low
23 part per billion levels."

24 Did I read that correctly, sir?

25 A. Yes.

1 Q. It says, "The presence of
2 organic fluorochemicals in the blood of the
3 general population and subpopulations, such
4 as workers, has been known dating back to the
5 1970s, and 3M's epidemiological study of its
6 own workers indicates no adverse effects at
7 part per million levels."

8 Did I read that correctly?

9 A. Yes.

10 Q. And there's a footnote there
11 for the -- that reference to the 1970s that
12 cites the Guy and Taves article; is that
13 right?

14 A. That's correct.

15 Q. Okay. The Guy and Taves
16 article that does not have the words
17 "perfluorooctane sulfonate" or "PFOS" in it,
18 right?

19 A. Right. I believe that they
20 characterized it as organic fluorine and then
21 provided some additional compositional
22 details.

23 Q. Okay. It says, "3M does not
24 believe that any reasonable basis exists to
25 conclude that PFOS presents a substantial

1 risk of injury to health or the environment."

2 Did I read that correctly, sir?

3 A. Yes.

4 Q. And that last part is quoted
5 directly from TSCA 8(e), the federal
6 regulation, right?

7 A. Correct.

8 Q. Okay. And it says,
9 "Nevertheless, as a precautionary measure, 3M
10 is submitting this information to the TSCA
11 8(e) docket at this time."

12 Did I read that correctly, sir?

13 A. Yes.

14 Q. Okay. Now, so even though 3M
15 was of the opinion that you were not required
16 to report this information, 3M erred on the
17 side of caution and disclosed it anyway; is
18 that right?

19 A. I think that that's a fair
20 characterization here. It's -- you know, it
21 was described as a precautionary filing.

22 Q. Okay. And so it's better safe
23 than sorry sometimes to disclose.

24 Do you agree with that
25 sentiment?

1 A. That's -- you know, that's a
2 judgment call, and that is the approach that
3 the company took in this case.

4 Q. Okay. And I understand you
5 weren't at the company at the time, but
6 you -- you work in that capacity today. You
7 help make these decisions on whether and when
8 and what to report under TSCA 8(e); is that
9 correct?

10 A. Yes, I serve as the program
11 manager for the current TSCA 8(e) committee
12 at 3M.

13 Q. Okay. So are you critical of
14 your predecessor's decision to report this to
15 the EPA?

16 A. Speaking only for myself?

17 Q. Yes, sir.

18 A. No, I'm not.

19 Q. Would you have done the same
20 thing? Would you have reported this same
21 information?

22 A. So I guess as far as how the
23 TSCA 8(e) committee functions, that would not
24 solely be my decision. It's, you know, a
25 committee made up of technical experts that

1 all have input into that decision.

2 But I do not disagree with the
3 decision to report this information.

4 Q. And so if this information was
5 available to 3M sooner, do you think they
6 should have reported it sooner?

7 A. And again, this is -- this was
8 characterized as a voluntary submission that
9 3M does not believe that this represented
10 substantial risk information. So, you know,
11 that would be a judgment call, I think, on
12 the part of the company.

13 Q. Right. I get that it's a
14 judgment call, and I'm asking you to make
15 that judgment.

16 If this same information was
17 available to 3M earlier, do you, Mr. Gerber,
18 think they should have disclosed it earlier?

19 A. So, you know, that's a
20 hypothetical situation, is my understanding,
21 because based on the documents that I've
22 reviewed, you know, there's a substantial
23 amount of information that was accumulated
24 over time that led up to this -- this filing.

25 So, you know, that same

1 information was not available to 3M earlier.

2 Q. Are you not able to answer my
3 hypothetical?

4 A. So I guess I can -- I can only
5 speak for myself and my opinion.

6 Q. Yes, sir.

7 A. But if that -- if that
8 information had been available at an earlier
9 time, then I think that would have been the
10 appropriate decision, to file just as 3M did
11 in 1998.

12 Q. Okay. So make sure I
13 understand your testimony correctly.

14 If this information was
15 available to 3M earlier, you, Mr. Gerber,
16 think it should have been disclosed earlier,
17 fair?

18 A. I guess maybe to resummairize, I
19 agree with the committee's decision to report
20 this information in 1998. My understanding
21 is that not all of this information was
22 available earlier than that.

23 In the hypothetical situation
24 that it had been, I would have agreed with
25 reporting that information at that time as

1 well.

2 Q. Okay. But, sir, are you aware
3 that there are allegations in this case that
4 3M in fact knew, was aware, that PFOS was
5 present in the blood of the general
6 population decades earlier than when this was
7 reported to the EPA?

8 A. I'm aware of those allegations,
9 yes.

10 Q. Okay. And are you aware
11 there's allegations in this case that 3M
12 should have disclosed this information to the
13 EPA decades earlier?

14 A. I'm aware of the allegations.

15 Q. Okay. Now, let's talk about
16 TSCA a little bit. We're talking about 8(e),
17 but TSCA is part of a larger environmental
18 regulation, federal regulation; is that
19 right?

20 A. That's correct.

21 (Gerber 30(b)(6) Exhibit DL1569
22 marked for identification.)

23 QUESTIONS BY MR. MCWILLIAMS:

24 Q. Okay. Now, let's pull up a
25 document I found online, DL1569.

1 And this actually, I think, is
2 a -- I found this yesterday, Craig, so we can
3 just look at it on the screen or I can maybe
4 ask Lara to drop it into the chat. But it's
5 pretty simple. We're just going to look at
6 the first page.

7 MR. WOODS: If you don't mind
8 dropping it in the chat just so if he
9 wants to flip over to the second page
10 or something, just to make sure he --

11 MR. MCWILLIAMS: And, Joe, if
12 you could just blow up that top header
13 so we can see the date of this and the
14 author.

15 QUESTIONS BY MR. MCWILLIAMS:

16 Q. You see this is from
17 August 2008, Mr. Gerber?

18 A. I do.

19 Q. And you see this is a
20 publication of the EPA?

21 A. Yes.

22 Q. Okay. And it says -- the title
23 of it is, "Failure to report chemical risk
24 can result in major fines, Section 8(e) of
25 the Toxic Substances Control Act."

1 Do you see that, sir?

2 A. I do.

3 Q. And if we just go to the first
4 paragraph, please, if you just pull up that
5 whole left -- let's do the whole -- yeah,
6 thank you. We can read this together.

7 The EPA writes, "Those who
8 manufacture, import, process or distribute
9 chemical substances or chemical mixtures have
10 a clear duty to notify the United States
11 Environmental Protection Agency when they
12 obtain any information that their chemical
13 substances or chemical mixtures presents a
14 substantial risk to public health or the
15 environment."

16 Did I read that correctly, sir?

17 You're on mute, sir.

18 A. I'm sorry. Yes, you read that
19 correctly.

20 Q. Okay. Is that consistent with
21 your understanding of TSCA 8(e)?

22 A. That is consistent with my
23 understanding.

24 Q. Okay. Let's keep reading.

25 It says, "Failure to timely

1 report this critical information is a serious
2 violation of the law because it prevents EPA
3 from determining what actions may be
4 necessary to understand and manage these
5 potential risks."

6 Did I read that correctly, sir?

7 A. Yes.

8 Q. And do you agree with that
9 statement from the EPA?

10 A. Yes.

11 Q. Okay. Let's go to the next
12 paragraph. It says, "Effective management of
13 potential risks to public health and the
14 environment from chemical substances and
15 chemical mixtures is tied to reporting
16 requirements in the Toxic Substances Control
17 Act, or TSCA."

18 Right?

19 A. Yes.

20 Q. And it says, "Section 8(e) of
21 TSCA is particularly important: Essentially
22 it establishes an early warning system to
23 immediately inform EPA" --

24 MR. SERFATY: Is there a note
25 thing here?

1 MR. MCWILLIAMS: Judah, you're
2 not on mute.

3 QUESTIONS BY MR. MCWILLIAMS:

4 Q. Let me try that again.

5 It says, "Section 8(e) of TSCA
6 is particularly important: Essentially it
7 establishes an early warning system to
8 immediately inform EPA and the public of
9 possible risks associated with chemicals."

10 Did I read that correctly, sir?

11 A. Yes.

12 Q. And do you agree with that
13 sentiment as stated by the EPA?

14 A. Yes, I agree.

15 Q. Okay. And if you want to flip
16 on a couple of pages, it talks about 3M being
17 fined for not complying with TSCA, but we're
18 not going to get into that.

19 Now, based on your review of
20 the documents in this case in preparing for
21 today's deposition, have you seen any written
22 evidence or record where the EPA took a
23 position on whether or not --

24 MR. SERFATY: The notes --

25 MR. MCWILLIAMS: Hey, Judah,

1 you're not on mute. Judah, are you on
2 mute now? I guess he shouldn't
3 answer.

4 All right. Where was I?

5 QUESTIONS BY MR. MCWILLIAMS:

6 Q. Sir, have you seen any
7 documents in this case where EPA took a
8 position on whether or not the presence of
9 PFOS in the blood of the general population
10 was a reportable event under 8(e) of TSCA?

11 A. I haven't seen that with
12 respect to 3M's disclosures that I recall.

13 Q. Okay. But you're not aware of
14 any -- strike that.

15 Now -- all right. Let's get
16 into another -- a guidance document from
17 TSCA.

18 So one of the things that the
19 EPA puts out to help companies like 3M to
20 know when and whether and what to report
21 under TSCA 8(e) includes guidance documents
22 about TSCA; is that right?

23 A. That's correct.

24 Q. And did you review any of those
25 guidance documents in preparation for your

1 deposition today?

2 A. I did. I reviewed several
3 guidance documents with respect to TSCA 8(e).

4 (Gerber 30(b)(6) Exhibit DL1374
5 marked for identification.)

6 QUESTIONS BY MR. MCWILLIAMS:

7 Q. Okay. Let's pull up DL1374,
8 please. And if you can blow up the Bates
9 stamp for everyone, please.

10 Craig, I don't know if you're
11 supposed to tell him what binder, but I know
12 it's not me.

13 MR. ROTTENBERG: It's me. I'm
14 not finding it. Is this the final?

15 MR. WOODS: It's the March '78.

16 MR. DOUGLAS: Hey, this is
17 Gary. While you were all doing that,
18 I got a text from Wes Bowden, who is
19 in the waiting room. Whoever is in
20 charge of that, if you could let him
21 in. I don't know if he's already in
22 or not.

23 VIDEOGRAPHER: He's now in.

24 QUESTIONS BY MR. MCWILLIAMS:

25 Q. Do you have this document in

1 front of you, sir?

2 A. Not yet. I'm sorry.

3 MR. MCWILLIAMS: Craig, can
4 y'all tell him the binder?

5 MR. ROTTENBERG: It's not
6 coming up by Bates. I don't know if
7 it's in the --

8 MR. MCWILLIAMS: It's the
9 March -- maybe could you blow up the
10 top of it, guys, so they can see what
11 it is? I'm sure they've got this.

12 MR. WOODS: Yeah, I'm sure we
13 can find it.

14 MR. MCWILLIAMS: Maybe I can
15 ask Lara to drop it into the chat.

16 MR. WOODS: Yeah. Can you drop
17 it into the -- either into chat or in
18 the -- to the exhibit link?

19 JOE WILLS: It's been uploaded
20 to the marked exhibits folder.

21 MR. MCWILLIAMS: Yeah.

22 Mr. Gerber, do you know how to
23 pull up that folder?

24 THE WITNESS: Yes.

25 What was the DL number?

1 MR. MCWILLIAMS: 1374.

2 THE WITNESS: All right. Just
3 a moment, please.

4 MS. SAY: This document was
5 disclosed.

6 MR. WOODS: Okay. We don't
7 have it by Bates in the tab or maybe
8 there's a mess-up in the Bates number.

9 QUESTIONS BY MR. MCWILLIAMS:

10 Q. But, Mr. Gerber, do you have it
11 in front of you now?

12 A. I do.

13 Q. Do you recognize this as one of
14 the documents you reviewed in preparation for
15 your deposition today?

16 A. Yes, I do.

17 Q. And this is a publication by
18 the EPA in the Federal Register; is that
19 right?

20 A. That's correct.

21 Q. Okay. And this is dated
22 March 16, 1978, correct?

23 A. Yes.

24 Q. And that's shortly after the
25 enactment of TSCA; is that right? TSCA was

1 1977 or '76?

2 A. Passed in '76.

3 Q. Okay. And this is some of the
4 guidance documents we were talking about
5 previously.

6 It says it's "A statement of
7 interpretation, enforcement policy,
8 notification of substantial risk."

9 Is that right?

10 A. That's correct.

11 Q. And that's Section 8(e) of
12 TSCA, right?

13 A. Yes.

14 Q. Okay. Let's go to the second
15 page, please.

16 MR. ROTTENBERG: It's Tab 13,
17 Jon. I found it.

18 THE WITNESS: All right. If
19 you can give me just a moment. I
20 prefer to look at the hard copy if I
21 can.

22 Okay. I have it. And second
23 page, you said?

24 QUESTIONS BY MR. MCWILLIAMS:

25 Q. Yes, sir.

Confidential Pursuant to Protective Order

1 On the left-hand column, you
2 see under Summary, the second paragraph, it's
3 written, Section 8(e) states that, quote,
4 "Any person who manufactures, processes or
5 distributes in commerce a chemical substance
6 or mixture and who obtains information which
7 reasonably supports the conclusion that such
8 substances or mixtures presents a substantial
9 risk of injury to health or the environment,
10 shall immediately inform the administrator of
11 such information unless such person has
12 actual knowledge that the administrator had
13 been adequately informed of such
14 information."

15 Did I read that correctly?

16 A. Yes.

17 Q. Okay. And that's consistent
18 with your understanding of TSCA and the
19 requirements at that time?

20 A. Yes.

21 Q. Okay. If we go to the next
22 page, please, over to the bottom right
23 corner, there's a paragraph titled "What
24 Constitutes Substantial Risk."

25 A. Uh-huh.

1 Q. And this is where EPA defined
2 that "A substantial risk of injury to health
3 or the environment is a risk of considerable
4 concern because of, A, the seriousness of the
5 effect," and then we'll -- and, "B, the fact
6 or probability of its occurrence."

7 Did I read that correctly, sir?

8 A. Yes.

9 Q. Okay. And this says, "The
10 human health effects listed in subpart A
11 below, for example, are so serious that
12 relatively little weight is given to
13 exposure. The mere fact that the implicated
14 chemical was in commerce constitutes
15 sufficient evidence of exposure. In
16 contrast, the remaining effects listed in
17 subparts B and C below must involve or be
18 accompanied by the potential for significant
19 levels of exposure."

20 Did I read that correctly, sir?

21 A. Yes. And it goes on to give
22 you examples of factors that would be
23 considered: general production levels,
24 persistence, typical uses, common means of
25 disposal and other pertinent factors.

1 Q. So there's really two
2 components to your reporting requirement -
3 not only what is the potential adverse
4 effect, but who is potentially exposed,
5 right?

6 A. I think the way that I would
7 state it is it's a sliding scale that depends
8 on the degree of the hazard and then the
9 degree of the exposure.

10 Q. Okay. And by the degree of
11 exposure you mean -- another way to describe
12 it is who was exposed or how many people are
13 exposed, right?

14 A. That would be one consideration
15 but not the only consideration.

16 Q. Right.

17 But is it a -- excuse me, go
18 ahead.

19 A. So it -- again, the degree of
20 exposure would include, you know, number of
21 people exposed and then also the level at
22 which they were exposed.

23 Q. Okay. And we're jumping ahead
24 a bit, but you brought it up, the sliding
25 scale. The way I understand it -- and you're

1 the expert; you correct me if I am wrong --
2 is that if something's exceptionally toxic,
3 the EPA doesn't -- or the adverse effect is
4 so severe, it doesn't matter if only one
5 person's exposed. The EPA wants you to
6 report it.

7 Whereas, as you slide the other
8 way, as the harm is less severe but as more
9 people are exposed, they want you to report
10 as well; is that fair?

11 A. Yeah. So my understanding of
12 the sliding scale as EPA has articulated it
13 is that the more the -- the more severe the
14 hazard, the less exposure plays a role in a
15 decision to report.

16 Exposure plays a much greater
17 factor -- is a much greater factor in the
18 decision to report when you're dealing with
19 lesser hazards.

20 Q. Okay. And you would agree with
21 me that exposure to an entire population, the
22 general population, you don't get any larger
23 exposure than that, right?

24 A. So in terms of scope of
25 exposure, that would be, you know, widespread

1 exposure, but there's still kind of the
2 dose-level component to it, the level of
3 exposure, that would also be a consideration
4 there.

5 Q. Let's keep reading on the next
6 page, please.

7 On the left-hand column, you
8 see like the first half of it, please.

9 It says, "The Agency considers
10 effects for which substantial risk
11 information must be reported to include the
12 following: A, human health effects, any
13 instance of cancer, birth defects,
14 mutagenicity, death or serious or prolonged
15 incapacitation, including the loss or ability
16 to use a normal bodily function, with a
17 consequent relatively serious impairment of
18 normal activities."

19 Did I read that correctly, sir?

20 A. Yes. If one or a few chemicals
21 is strongly implicated --

22 Q. Right.

23 A. -- is the end to that.

24 Q. Okay. And it goes on. It
25 says, "Any pattern of effects or evidence

1 which reasonably supports the conclusion that
2 the chemical substance or mixture can produce
3 cancer, mutation, birth defects or toxic
4 effects resulting in death or serious or
5 prolonged incapacitation."

6 Is that correct?

7 A. Yes.

8 Q. And then under Environmental
9 Effects it says, "Widespread and previously
10 unsuspected distribution in environmental
11 media, as indicated in studies, excluding
12 materials contained within appropriate
13 disposal facilities."

14 Did I read that correctly, sir?

15 You're on mute again.

16 A. I'm sorry about that.

17 Yes. In this -- this is a case
18 where EPA has issued substantial additional
19 clarifying guidance for how reporting
20 obligations are interpreted in this area.
21 And importantly, EPA has said, you know,
22 widespread, previously unsuspected
23 distribution in the environment on its own is
24 a measure of exposure, and there are other
25 necessary factors that need to be considered.

1 Q. Right.

2 Like a nontrivial adverse
3 effect, right?

4 A. Correct.

5 Q. Okay. But you would agree with
6 me, sir, that PFOS is widespread in the
7 environment?

8 A. Based on EPA's guidance, I
9 agree that finding it in, you know, various
10 environmental media, detecting it in various
11 wildlife species and in general population
12 blood, that that would meet EPA's definition
13 of widespread.

14 Q. When did 3M first obtain
15 information that PFOS was widespread in the
16 environment?

17 A. And again, I think that our
18 environmental scientists would best be able
19 to speak to the timeline and the specific
20 findings there.

21 My understanding is that much
22 of that information, detection in various
23 wildlife species, the ability to detect in
24 individual samples, in the general
25 population, that that was developed in the

1 late '90s.

2 Q. Okay. So 3M did not obtain
3 information that PFOS was widespread in the
4 blood of the general population until the
5 late '90s? That's your testimony?

6 A. Based on the documents that I
7 have reviewed, those are -- appear to be
8 factors that went into the decision in 1998
9 to report to the TSCA 8(e) docket.

10 MR. MCWILLIAMS: Okay. I move
11 to strike as nonresponsive.

12 QUESTIONS BY MR. MCWILLIAMS:

13 Q. Sir, I'm asking you
14 specifically if -- do I understand your
15 testimony correctly that 3M did not obtain
16 information that PFOS was widespread in the
17 blood of the general population until the
18 late 1990s?

19 A. And again, I -- I don't think
20 that I'm best able to speak to that question.

21 My understanding based on the
22 documents that I've reviewed is that 3M's
23 understanding of that information evolved
24 significantly over time; that there was
25 recognition from the Guy and Taves paper of

1 the potential for organic fluorine, but more
2 specific findings came later.

3 Q. So you're not prepared today to
4 discuss when 3M first obtained information
5 that PFOS was present in the blood of the
6 general population?

7 A. So based on the documents that
8 I've reviewed, you know, 3M reviewed and made
9 that conclusion as part of its 1998
10 disclosure to the EPA. Those were specific
11 findings that resulted in the TSCA 8(e)
12 review.

13 Q. Sir, there's -- I'm asking
14 when.

15 Can you please tell me when 3M
16 obtained this information?

17 A. And again, I think that goes
18 to, you know, complex questions about the
19 state of the science that would be better
20 answered by 3M's environmental scientists.

21 Q. So you're unprepared to answer
22 my question as to when 3M obtained this
23 information that was ultimately reported to
24 the EPA under TSCA?

25 A. No, I'm prepared to answer

1 about 3M's evaluation of information under
2 TSCA 8(e), and I see that there was
3 evaluation of information from worker blood,
4 consideration of the Guy and Taves
5 information back in the late '70s. I know
6 that there was more specific information that
7 was developed in the late '90s, and that was
8 also reviewed for TSCA 8(e) reporting.

9 MR. MCWILLIAMS: Move to strike
10 as nonresponsive.

11 QUESTIONS BY MR. MCWILLIAMS:

12 Q. Sir, either you can tell me
13 when 3M obtained this information or you
14 can't. And if you can, I'd like you to tell
15 me when. And if you can't, I'd like you just
16 to tell me you can't and not give me these
17 nonresponsive talking points, please.

18 A. Right. I cannot provide a
19 specific date for that.

20 Q. Okay. I can use that. Thank
21 you.

22 Let's keep reading. I forgot.
23 Where did we leave off? I think we're -- so
24 we did environmental effects. Let's keep
25 going.

1 Under 2 it says, "Pronounced
2 bioaccumulation."

3 Is there a period after that?
4 Yeah, okay.

5 So you would agree with me,
6 sir, that PFOS can bioaccumulate in organisms
7 to a pronounced degree?

8 A. And the interpretation of those
9 results are beyond my area of expertise. I
10 understand that it is recognized as a
11 bioaccumulative compound.

12 Q. Okay. And when did 3M first
13 obtain information that PFOS was a
14 bioaccumulative compound, to use your term?

15 A. And based on the documents that
16 I've reviewed, this is again something that
17 appears to have evolved. That understanding
18 has evolved considerably over time, so I'm
19 not sure that I can give you a specific date.

20 Q. Are you prepared to take -- are
21 you prepared today to tell -- to testify when
22 3M obtained that information, that PFOS was a
23 bioaccumulative compound?

24 A. I have reviewed documents that,
25 you know, recognized slow excretion of

1 organic fluorine from blood and when that was
2 reviewed for TSCA 8(e) purposes, and then the
3 more specific findings later in the '90s as
4 well.

5 So, again, it appears to be
6 kind of a series of reviews based on new
7 information that was received at various
8 points in time.

9 Q. Okay. So when -- based on your
10 review, when did 3M first obtain information
11 that PFOS was a bioaccumulative compound?

12 I understand that more
13 information came in along the way. That's
14 science. That's knowledge. It's an
15 iterative process.

16 But I want to know, when did 3M
17 first obtain any information indicating that
18 PFOS was a bioaccumulative compound?

19 A. So I recall reviewing documents
20 where the slow excretion from -- was
21 recognized based on monitoring of worker
22 blood levels. I believe that was in the late
23 1970s. So that would be one indication that
24 was reviewed for TSCA 8(e) purposes.

25 Q. Okay. Thank you.

1 A. Again, the understanding of
2 that end point continued to evolve over time.

3 Q. Right.

4 But you understand, sir, that
5 TSCA specifically states that you -- that
6 companies aren't to wait until there's
7 conclusive evidence.

8 The moment you obtain any
9 information indicating a substance may be
10 harmful or it may be bioaccumulative, you
11 have a duty to report, right?

12 A. I don't think that's quite
13 correct. So EPA has said that you should not
14 wait for absolutely definitive information,
15 but you still have to have information that
16 reasonably supports a conclusion of
17 substantial risk.

18 And particularly for
19 bioaccumulation, that, in and of itself, is
20 not a reportable substantial risk
21 information. That has to be considered along
22 with other factors.

23 Q. Like nontrivial adverse
24 effects, right?

25 A. That would be one of the other

1 factors, and then the potential for
2 widespread distribution and potential for
3 widespread exposure.

4 Q. Okay. We'll get to that.

5 But death is a nontrivial
6 adverse effect in Mr. Gerber's opinion,
7 right?

8 A. Yes.

9 Q. Okay. So let's keep reading.

10 Under Pronounced
11 Bioaccumulation it's written, "Measurements
12 and indicators of pronounced bioaccumulation,
13 heretofore unknown to the administrator,
14 including bioaccumulation in fish beyond
15 5,000 times water concentration in a 30-day
16 exposure or having an N-octanol/water
17 partition coefficient greater than 25,000,
18 should be reported when coupled with
19 potential for widespread exposure and any
20 nontrivial adverse effect."

21 Right?

22 A. That's correct.

23 Q. Okay. Let's try this. True or
24 false: By 1980, 3M was in possession of
25 information that PFOS was a bioaccumulative

1 compound, that it was widespread in the blood
2 of the general population, and that it killed
3 rhesus monkeys that were exposed to it.

4 True or false?

5 A. Based on my review of the
6 documents, 3M had all of -- had those pieces
7 of information, although it --
8 bioaccumulation, again, I think that's
9 that -- maybe it was the slow elimination
10 rate that was recognized at the time, but all
11 of those informations need -- all of that
12 information needs to be put together and
13 judgment applied in making a TSCA 8(e)
14 reporting decision.

15 Q. Right. And 3M did that.

16 3M had all of that information
17 and decided not to disclose it at that time
18 in 1980, right?

19 A. Yes. I've reviewed documents
20 that -- you know, after the -- those studies
21 were conducted, that information was reviewed
22 against EPA's reporting criteria, and the
23 company made the determination that the
24 information was not substantial risk
25 information under TSCA 8(e).

1 Q. Right.

2 That was the company's opinion
3 at the time, right?

4 A. Yes.

5 And these decisions, EPA has
6 recognized, always involve a level of
7 judgment.

8 Q. Okay. Now, you seem to be kind
9 of distinguishing bioaccumulation from the
10 slow elimination.

11 Am I hearing you correctly?

12 A. Yeah, I'm trying to kind of
13 accurately represent what I've reviewed and
14 not go beyond my area of expertise. And so
15 the interpretation of those results and their
16 significance, I think our toxicologists would
17 best be able to speak to that.

18 Q. Okay. But you understand, sir,
19 that bioaccumulation is a function of a
20 substance's half-life in organisms, right?

21 A. That -- again, that's not my
22 area of expertise, but that's my general
23 understanding.

24 Q. Right.

25 And slow elimination, terms you

1 keep using, is a reference to how long it
2 takes a chemical to leave a person's body,
3 right?

4 A. That's my understanding.

5 Q. And the measure -- and the way
6 a toxicologist measures the speed at which a
7 compound leaves a person's body is half-life,
8 right?

9 A. Yes, I believe that's correct.

10 Q. Okay. Let's keep reading.

11 It says, "Any nontrivial
12 adverse effect heretofore unknown to the
13 administrator, associated with a chemical
14 known to have bioaccumulated to a pronounced
15 degree or to be widespread in environmental
16 media."

17 Did I read that correctly, sir?

18 A. Yes.

19 Q. I think we already read that,
20 didn't we.

21 Well, let's go to the next
22 column over, the very bottom, please.

23 Actually, I think that's all I
24 have for that, so let's keep moving along.

25 Let's move --

1 MR. WOODS: Ned?

2 MR. MCWILLIAMS: Yes, sir.

3 MR. WOODS: We've been going
4 for a little over an hour. Can we
5 take a short break?

6 MR. MCWILLIAMS: If that's what
7 you need, Craig, anything for you.

8 MR. WOODS: Okay.

9 MR. MCWILLIAMS: Let's go off
10 the record, then we'll talk.

11 VIDEOGRAPHER: The time is
12 10:19 a.m. We're off the record.

13 (Off the record at 10:19 a.m.)

14 VIDEOGRAPHER: We're back on
15 the record. The time is 10:27 a.m.

16 QUESTIONS BY MR. MCWILLIAMS:

17 Q. We're back, Mr. Gerber.

18 Did you have an opportunity to
19 meet with your attorneys during that short
20 break?

21 A. Yes, I did.

22 Q. Okay. Is there any of your
23 prior testimony you'd like to change?

24 A. No. We really didn't discuss
25 anything.

1 Q. Okay. Mr. Gerber, you're
2 physically located today in Minnesota; is
3 that right?

4 A. That's correct.

5 Q. Are you at your residence?

6 A. Yes.

7 Q. Okay. And do you know if the
8 water that's served to your residence there
9 in Minnesota is treated for PFOA or PFOS?

10 A. I believe that it is. We do
11 receive regular reports from the Cottage
12 Grove water department.

13 Q. Okay. And so do you know who
14 pays for that treatment?

15 A. My understanding is that that
16 is paid for in part by 3M's settlement with
17 the State of Minnesota.

18 Q. So, but is it fair to say that
19 3M pays for the treatment of PFOA or PFOS
20 from the water that serves your home in
21 Minnesota?

22 A. I don't know the details of
23 that, but I have the general understanding
24 that that is what part of that settlement
25 went to.

1 Q. Okay. Do you think that's a
2 good thing, that both it's treated and that
3 3M is picking up the tab?

4 A. Just in my personal opinion?

5 Q. Yes, sir.

6 A. Yes, I think that that's a
7 responsible thing to do.

8 Q. Okay. And that's in part
9 because 3M is responsible for the PFOA or
10 PFOS that's in your water; is that right?

11 A. Again, I can't speak
12 specifically to my water. I know that 3M has
13 manufacturing facilities in Cottage Grove and
14 that that was the subject of the settlement
15 with the State of Minnesota.

16 (Gerber 30(b)(6) Exhibit DL1557
17 marked for identification.)

18 QUESTIONS BY MR. MCWILLIAMS:

19 Q. Okay. All right. Let's
20 keep -- let's move on to another document,
21 please, DL1557.

22 And this is the June '91 TSCA
23 guidance document. This is one of the
24 documents that your lawyers were kind enough
25 to provide to us as one of the materials you

1 considered in prepping for today's
2 deposition.

3 Do you recognize the document?

4 A. Yes.

5 Q. Okay. Craig, can you tell him
6 where this is in his binder?

7 MR. MCWILLIAMS: Yeah.

8 Do you have that, Daniel?

9 MR. ROTTENBERG: Yeah.

10 MR. WOODS: Maybe search for
11 the title if you don't have a Bates.

12 MR. ROTTENBERG: Well, I don't
13 believe this is in the exhibits we
14 received, correct?

15 MR. MCWILLIAMS: Correct. This
16 is an exhibit I received from 3M.

17 MR. WOODS: Yeah. Jon, do you
18 have that handy?

19 THE WITNESS: Not in front of
20 me, but I could go get it.

21 QUESTIONS BY MR. MCWILLIAMS:

22 Q. I'm just going to pull parts up
23 on the screen and ask if it's consistent with
24 your understanding of TSCA.

25 Can you do that with us just in

1 the interest of time?

2 A. Yes.

3 MR. WOODS: And if for some
4 reason you need to look at the whole
5 document, Jon, just say you need to
6 look at the whole document.

7 MR. MCWILLIAMS: Craig is
8 absolutely right. I will try to ask
9 questions in a way that you won't need
10 the full document, okay?

11 MR. ROTTENBERG: And I can drop
12 the link in the chat.

13 QUESTIONS BY MR. MCWILLIAMS:

14 Q. Sir, do you recognize this
15 document as one of the documents you reviewed
16 in preparation for today's deposition?

17 A. Yes, I do.

18 Q. And is this a document prepared
19 by the United States Environmental Protection
20 Agency, dated June 1991?

21 A. Yes.

22 Q. And does this document contain
23 Q&A additional information to companies such
24 as 3M to help them comply with TSCA
25 Section 8(e)?

1 A. Yes, it does.

2 Q. Okay. Now let's flip right
3 into it then, please. If you go to page 12,
4 you'll see it's .12 on the bottom right
5 corner, Joe.

6 Okay. And you see this is a
7 titled section, Reporting Under Section 8(e)
8 of TSCA.

9 Do you see that, sir?

10 A. Yes.

11 Q. And then the second paragraph
12 says, "Why is Section 8(e) reporting
13 important?"

14 And the EPA writes, "In
15 general, the EPA considers Section 8(e) of
16 TSCA to be a critically important information
17 gathering tool that serves as a, quote,
18 'early warning' mechanism for keeping the
19 Agency and others apprised of newfound
20 serious chemical hazards and/or exposures.
21 Section 8(e) data are extremely valuable
22 input for the hazard identification and risk
23 assessment activities within and outside
24 EPA."

25 Did I read that correctly, sir?

1 A. Yes.

2 Q. And do you agree with these
3 statements from the EPA?

4 A. Speaking for myself, yes, I do.

5 Q. Well, speaking for 3M, does 3M
6 agree that TSCA 8(e) reporting is important?

7 A. Yes.

8 Q. And that it's also not only
9 important to report chemical hazards but also
10 chemical exposures, right?

11 A. Chemical exposures, again,
12 if -- if it meets the definition of
13 substantial risk information. So exposure
14 information would always need to be paired
15 with hazard information to make a substantial
16 risk determination.

17 Q. Right.

18 But the EPA, and I believe even
19 you, agree that death, there's nothing worse
20 than death. There's nothing more adverse
21 than death as a nontrivial adverse effect,
22 right?

23 A. Yes.

24 Q. And it's something that should
25 always be reported?

1 A. No, I -- that's not my
2 understanding based on EPA's guidance.

3 Q. Okay.

4 A. So there are other factors that
5 would need to be considered. You know, EPA
6 establishes, like, acute lethality ranges of
7 what information would be reportable and
8 other information that would be of low
9 concern.

10 And there's also, you know, the
11 underlying considerations that are always
12 available about whether the information is
13 reliable or can reasonably support a
14 conclusion and whether the information is
15 known to the administrator already.

16 Q. Okay. Let's go over to the
17 next page, please, where it's written -- the
18 title is, "What is substantial risk
19 information?"

20 It says, "The term 'substantial
21 risk information' refers to that information
22 which reasonably supports a conclusion that
23 the subject chemical or mixture presents a
24 substantial risk of injury to health or the
25 environment; however, such information need

1 not and most typically does not establish
2 conclusively that a substantial risk exists."

3 Did I read that correctly, sir?

4 A. Yes.

5 Q. And do you and 3M agree with
6 that statement?

7 A. Yes.

8 Q. Okay. It continues. It says,
9 "In deciding whether information is, quote,
10 'substantial risk information,' one must
11 consider, 1, the seriousness of the adverse
12 effect; and 2, the fact or probability of the
13 effect's occurrence. In determining
14 section" -- "TSCA Section 8(e)
15 applicability/reportability, these two
16 criteria would be weighted differently
17 depending upon the seriousness of the effect
18 or the extent of the exposure. For example,
19 the more serious the effect, the less heavily
20 one should weigh actual or potential exposure
21 and vice versa."

22 Did I read that correctly, sir?

23 A. Yes.

24 Q. And that's in reference to the
25 sliding scale we discussed previously, right?

1 A. That's correct.

2 Q. That the greater the extent of
3 exposure, the less -- the less toxic the
4 adverse effect needs to be in order to be
5 reportable, right?

6 A. In general, yeah, the sliding
7 scale operates that way, and the EPA has
8 issued a lot of additional guidance to help
9 with interpretation of that.

10 Q. Okay. Let's keep reading.
11 It says, "For example, in cases
12 where serious effects such as birth defects
13 or cancer as evidenced by benign and/or
14 malignant tumors are observed, the mere fact
15 that the implicated chemical is in commerce,
16 including chemicals at their research and
17 development stage, constitutes sufficient
18 evidence of exposure to submit the newfound
19 toxicity data."

20 Did I read that correctly, sir?
21 You're on mute again.

22 A. I'm sorry. Yes, you read that
23 correctly.

24 Q. Okay. And so what that means
25 is that even if you have -- even if there's

1 zero evidence of exposure, some adverse
2 effects are so adverse that you must report,
3 even if nobody's exposed, right?

4 A. That's not how I understand
5 this guidance. There is still an exposure
6 element there talking about the fact that the
7 implicated chemical is in commerce.

8 So, for example, you know, R&D
9 evaluations may not provide, you know,
10 sufficient exposure in those cases.

11 Q. Even though it says, "including
12 chemicals at their research and development
13 stage"?

14 A. Oh, I'm sorry. Yeah, no,
15 that's correct for certain categories of
16 information.

17 Q. So, again, so let's -- so I was
18 correct in there are some adverse effects
19 that are so adverse that even in the absence
20 of any exposure, one must report, correct?

21 A. Yeah. So to go back and
22 correct my -- my previous statement. So,
23 yeah, EPA has defined certain effects where
24 if the chemical is in commerce, exposure is
25 essentially presumed.

1 Q. Right. Okay.

2 Let's go to page 7, please.

3 There's a section titled "What
4 are the sources of Section 8(e) reportable
5 information?"

6 Do you see that, sir?

7 A. Yes.

8 Q. And it says, "TSCA Section 8(e)
9 reportable information can come from a
10 variety of sources, including, but not
11 limited to, draft, interim or final written
12 reports, including study reports, letters,
13 telegrams, telex reports, or verbal reports
14 received at meetings or by phone, that
15 involve observations, including preliminary
16 observations, from, for example, controlled
17 or uncontrolled human or animals
18 studies/events, including, but not limited
19 to, studies/events that involve high-dose
20 levels or nonroutine routes of exposure."

21 Did I read that correctly, sir?

22 A. Yes.

23 Q. So this -- and the reason I
24 read that is because the information could be
25 as simple as a phone call informing 3M of a

1 particular fact that could be -- could be
2 reportable under TSCA section 8(e), right?

3 A. Yes, that's correct.

4 Q. Okay. And, sir, you're aware
5 that 3M in fact received multiple phone calls
6 from Drs. Guy and Taves informing them that
7 they believed that 3M-made fluorocompound
8 PFOA was present in the blood of the general
9 population, right?

10 A. I have reviewed documents
11 indicating that there were discussions
12 between 3M and Guy and Taves and discussions
13 about the identification of those substances.

14 Q. And 3M also received letters
15 from Guy and Taves, right?

16 A. Based on the documents I've
17 reviewed, I believe that's correct.

18 Q. Okay. Let's go down to the
19 bottom.

20 It says, "The evidence that
21 offers reasonable support for a conclusion of
22 substantial risk need not be complete nor
23 definitive but should provide a plausible
24 link between, 1, an observed serious effect
25 and one or few chemicals, e.g., in a discrete

1 process/operation; or 2, a specific
2 product/activity in a previously unrecognized
3 exposure to a chemical that is known or
4 reasonably anticipated to cause serious
5 adverse effects or environmental effects."

6 Did I read that correctly?

7 A. Yes.

8 Q. Was that consistent with your
9 understanding of TSCA?

10 A. Yes.

11 Q. Okay. Let's go to page 13,
12 please, of this guidance document from the
13 EPA.

14 Down at the bottom half it
15 says, "How must Section" -- "How must
16 Section 8(e) information be reported?"

17 And I want to skip all this.
18 Actually, I'm sorry, I'm just going to skip
19 that for now.

20 Okay. Let's go to page 21,
21 please.

22 And there's a section of this
23 guidance documents where there's -- it's like
24 a Q&A, right? Kind of like what we call
25 frequently asked questions nowadays?

1 A. Yes.

2 Q. Okay. And let's go to the
3 first frequently asked question on page 21.

4 So the EPA poses a question and
5 then provides an -- a question that industry
6 may have, that 3M may have, right?

7 A. Yes.

8 Q. Okay. And let's read this Q&A.

9 It says, "Does Section 8(e) of
10 TSCA intend the submission of animal test
11 information: A, when the determination of
12 substantial risk has been made; or B, when
13 merely a finding of positive animal test
14 results useful in the further assessment of
15 human risk has been determined?"

16 Do you understand that question
17 that EPA's posed?

18 A. Yes.

19 Q. Okay. And let's look at their
20 answer.

21 It says, "TSCA Section 8(e)
22 requires the timely submission of evidence,
23 including preliminary evidence, from animal
24 studies that implicates the tested chemical
25 as causing serious toxicological effects, for

1 example, cancer, neurotoxicity, birth
2 defects."

3 Did I read that correctly, sir?

4 A. Yes.

5 Q. And could we add death to that
6 list of serious toxicological effects?

7 A. So EPA does not list it in its
8 response, and, again, in EPA's other guidance
9 here, they do establish certain categories,
10 especially for acute toxicity data.

11 Q. So let me withdraw and let me
12 ask a different question.

13 Do you agree that death is a
14 serious toxicological effect?

15 A. Yes.

16 Q. Okay. Let's keep reading.

17 It says, "A decision to report
18 the observance of such serious toxicological
19 effects should not hinge in any way on a
20 judgment of either the actual or potential
21 exposure to the chemical or a judgment about
22 the degree of relevancy of the findings to an
23 overall assessment of human risk. In other
24 words, the decision to report under
25 Section 8(e) in such cases should be based

1 simply on the observance of the serious
2 toxicological effects."

3 Did I read that correctly, sir?

4 A. Yes.

5 Can I go back to my previous
6 response for a moment?

7 Q. Sure.

8 A. So, you know, yes, death --
9 death is a serious adverse effect, but it
10 does need to be evaluated within the context
11 of EPA's guidance for those end points.

12 Q. Okay. But this Q&A makes very
13 clear that if you have a serious-enough
14 toxicologic effect, there's no judgment to be
15 made about exposure or dose. It says you
16 must report, right?

17 A. Yes, that -- consistent with
18 the earlier statements that -- assuming the
19 chemical is in commerce, there are certain
20 end points that are serious enough that
21 exposure is not given much weight at all.

22 Q. Okay. And by 1980, 3M knew
23 that PFOS was in commerce, right?

24 A. Yes.

25 Q. And 3M knew that at the doses

1 studied in rhesus monkeys, it was capable of
2 killing them, right?

3 A. So I have reviewed the studies
4 that I believe you're referring to. I
5 believe there were range finder studies
6 there. So this is where EPA's guidance
7 around, you know, lethality and death is
8 important.

9 I think it's also important to
10 recognize that this -- this guidance here is
11 dated at 1991 and reflects, you know, an
12 attempt to answer questions that had come up
13 from industry.

14 MR. MCWILLIAMS: Move to strike
15 as nonresponsive.

16 QUESTIONS BY MR. MCWILLIAMS:

17 Q. Mr. Gerber, my question was
18 slightly different. I'm asking you if you
19 can answer this with a true or false.

20 True or false: As of 1980, 3M
21 was aware of two things, that PFOS was in
22 commerce, and that PFOS killed rhesus monkeys
23 that were exposed to PFOS in toxicological
24 experiments; true or false?

25 A. So I was -- yeah, 3M was aware

1 that PFOS was in commerce. 3M had study
2 results in a range finder study showing
3 deaths of monkeys.

4 Q. Great. Thank you.

5 (Gerber 30(b)(6) Exhibit DL1552
6 marked for identification.)

7 QUESTIONS BY MR. MCWILLIAMS:

8 Let's move on to DL1552,
9 please. Can you pull up the Bates, please?

10 And again, I don't know...

11 MR. ROTTENBERG: Is this
12 another one that you got from us that
13 you didn't provide?

14 MR. MCWILLIAMS: Correct.

15 Because the sequence of events was --

16 MR. WOODS: Yeah.

17 MR. MCWILLIAMS: It's a
18 two-page document. It's real simple.
19 Again, if you need it, we'll print it
20 out and send it to you. I promise
21 there's no tricks with this one. I
22 hope you saw that with the last one.

23 QUESTIONS BY MR. MCWILLIAMS:

24 Q. If you just pull this up, sir,
25 you recognize this as a 3M document?

1 You see it's got 3M Bates
2 stamps on the bottom right corner? That
3 means your lawyers gave it to us. Craig will
4 shut me down if I misrepresent any of this to
5 you.

6 But you see this is -- at the
7 very top, you see this is EPA activity under
8 TSCA Section 8(e), report of public meeting,
9 December 7, 1978?

10 Do you see that, sir?

11 A. Yes. Just a second. I'm going
12 to switch this over to my other screen so
13 it's a bit larger.

14 Q. Do you recognize this is one of
15 the documents you reviewed in preparation for
16 your deposition today?

17 A. Yes, I do.

18 Q. Okay. And you see this is a
19 report written by a 3M employee who attended
20 an EPA meeting specific to the topic of what,
21 when and where one must report certain
22 information under TSCA Section 8(e), the
23 subject of today's deposition, right?

24 A. Yes. My understanding, this is
25 a report out from a meeting attended with EPA

1 discussing interpretation of TSCA 8(e).

2 Q. Okay. Let's read the first
3 paragraph.

4 It says, "Over 400 industry
5 representatives heard the Environmental
6 Protection Agency's toxic substances staff
7 review issues related to enforcement of
8 Section 8(e) of the Act in a sometimes stormy
9 meeting on December 7th."

10 Did I read that correctly, sir?

11 A. Yes.

12 Q. And you knew, sir, that
13 industry was not a big fan of this law being
14 enacted because it put tremendous
15 requirements on the chemical industry, right?

16 A. I really can't speak for the
17 state of mind of industry at the time, so
18 that's beyond my understanding.

19 Q. Okay. So let's go to the
20 second page, please.

21 It says -- the third paragraph,
22 it says, "The tone of the afternoon session
23 can be summed up in the following statement:
24 When in doubt, report."

25 Did I read that correctly, sir?

1 A. Yes.

2 Q. And can you please underline
3 that in red, "When in doubt, report"?
4 Because I think this is critically important.

5 Is that consistent with your
6 understanding of what EPA expects from
7 companies like 3M when it's trying to decide
8 whether or not to report?

9 A. So I think this is a summary
10 statement that needs to be linked back to
11 EPA's other guidance and the statute itself
12 where there needs to be reasonable support
13 for a conclusion, but that doesn't have to be
14 absolutely definitive.

15 So that's how I would read this
16 statement.

17 Q. Okay. But the 3M
18 representative who attended this meeting
19 summed it up with these four words, right?

20 A. I see that in this document.

21 Q. Okay. So just so there's no
22 ambiguity here, uncertainty, 3M -- excuse me.
23 EPA made crystal clear to industry, including
24 3M, who was in attendance at this meeting,
25 that when in doubt, you must report, right?

1 A. So this is one individual's
2 summary report of that meeting. I'm aware
3 that 3M was actively involved in monitoring
4 EPA's other guidance on this topic, and that
5 would have informed the company's
6 understanding of its obligations.

7 So I don't think that this can
8 be summed up in four words.

9 Q. Okay. But nonetheless, it was
10 summed up in four words, right?

11 The people who actually
12 attended the meeting with EPA, it sounded so
13 crystal clear to them they were able to sum
14 it up in four words, fair?

15 A. This was their summary from
16 that meeting.

17 Q. Okay. So back to this
18 May 1998.

19 May 1998, 3M, for the first
20 time, tells the EPA that a chemical it makes,
21 PFOS, is present in the blood of the general
22 population, right?

23 You're on mute.

24 A. Sorry about that.

25 So the May 1998 report

1 reported, you know, blood samples from
2 members of the general population.

3 Q. Okay. And subsequent to that
4 decision to inform the EPA of that fact, 3M
5 decided to quit making PFOS, right?

6 A. That's my understanding, yes.

7 Q. And other related chemicals; is
8 that right?

9 A. Yes. Yes, there were other
10 substances that were also phased out.

11 Q. And that phaseout accounted for
12 \$300 million in annual sales, more than
13 \$300 million in annual sales, at that point
14 in time, right?

15 A. Based on the documents I've
16 reviewed, I believe that's correct.

17 Q. Okay. And also subsequent to
18 3M telling the EPA that this chemical was in
19 everyone's blood, the EPA essentially banned
20 other companies from making it or importing
21 it, right?

22 A. That -- that's not quite my
23 understanding. They did issue a SNUR for
24 perfluoroalkyl sulfonate substances that
25 required notification prior to manufacture or

1 import of those substances, but the Agency
2 did allow for ongoing uses of certain PFAS
3 substances.

4 Q. Well, let's see how the Agency
5 characterized what they did.

6 Is that -- would you defer to
7 them on characterizing what they did or why
8 they did it with respect to the SNUR?

9 A. Are you wanting to refer to
10 that document?

11 Q. Yeah, but I'm asking you. I'm
12 asking you, Mr. Gerber, who would know more
13 about what EPA did and why they did it, EPA
14 or you?

15 A. EPA would articulate the
16 reasons for its action within the preamble to
17 the SNUR.

18 Q. Okay. Let's pull up -- and
19 we'll get to the Federal Register. Let's
20 first look at the EPA website, which is
21 usually written in a format for people to
22 easily understand, right?

23 A. That's -- that's my general
24 understanding.

25 (Gerber 30(b)(6) Exhibit DL1423

1 marked for identification.)

2 QUESTIONS BY MR. MCWILLIAMS:

3 Q. Okay. Let's pull up DL1423,
4 please.

5 Okay. Sir, do you recognize
6 this as a printout from the EPA website?

7 A. Yes, I do.

8 Is this -- do we have a tab
9 number for this document?

10 Q. Ask your lawyer. This was
11 disclosed.

12 MR. WOODS: Oh, it was? Okay.

13 Yeah. Daniel, why don't you
14 see if you can get a tab number.

15 QUESTIONS BY MR. MCWILLIAMS:

16 Q. Again, this could be very
17 quickly and easily done if we just go through
18 it together. I promise there's no tricks to
19 it. Craig will embarrass me if I do
20 something like that.

21 Okay?

22 A. I -- it's really just easier
23 for me to follow along on the hard copy, if
24 that's okay.

25 Q. I understand. Okay. We'll

1 wait.

2 MR. ROTTENBERG: Tab 180.

3 THE WITNESS: All right. I

4 have it. Thank you.

5 QUESTIONS BY MR. MCWILLIAMS:

6 Q. You're welcome.

7 Do you recognize this, sir, as
8 a printout of the EPA website?

9 A. Yes, I do.

10 Q. And if you would go -- I'm
11 sorry, I don't know what page, but there's a
12 section titled "EPA" -- I'm sorry, go to the
13 first page. We can see what this is.

14 This is a website created by
15 the EPA titled "Overview of PFAS actions
16 under TSCA."

17 Right?

18 A. Yes.

19 Q. And PFOS, the chemical we've
20 been talking about all day, is one of the
21 PFAS chemicals, right?

22 A. I'm sorry, can I interrupt for
23 just a second?

24 So Tab 180, that's EPA and 3M
25 announced phaseout of PFOS. I don't -- yeah,

1 I don't think I'm on --

2 MR. ROTTENBERG: There's no

3 Bates number and it's not --

4 MR. WOODS: 167.

5 MR. ROTTENBERG: Thanks, Craig.

6 MR. WOODS: Tab 167.

7 THE WITNESS: Sorry about that.

8 Okay. I'm there now.

9 QUESTIONS BY MR. MCWILLIAMS:

10 Q. If you go to the section
11 titled -- you see that this is an EPA website
12 about what EPA has done under TSCA with
13 respect to these chemicals we've been talking
14 about all day?

15 A. Yes.

16 Q. And if we could go to the
17 section entitled "EPA's Investigation of
18 Perfluorooctanyl Sulfonate?" I don't know
19 what page it is. It looks like this. Yeah,
20 there we go.

21 MR. WOODS: Yeah, page 4.

22 QUESTIONS BY MR. MCWILLIAMS:

23 Q. Yeah. If you could just blow
24 up the two paragraphs, please, the first two
25 paragraphs. There you go.

1 You can see where it says, "In
2 the late 1990s, EPA received information
3 indicating that PFOS was widespread in the
4 blood of the general population and presented
5 concerns for persistence, bioaccumulation and
6 toxicity"?

7 A. Yes.

8 Q. Okay. So there's no mention of
9 Guy and Taves' publication in the '70s in
10 this website, is there?

11 A. Not in this summary, no.

12 Q. Okay. But it is true that 3M
13 for the first time informed the EPA of the
14 presence of PFOS in the blood of the general
15 population in the late 1990s, right?

16 A. Yeah. My understanding based
17 on the documents that I've reviewed is that
18 3M disclosed specific findings in 1998
19 related to general population blood samples.

20 Q. Okay. Let's keep reading.

21 It says, "Following discussions
22 between EPA and the 3M, the manufacturer of
23 PFOS, the company terminated production of
24 these chemicals."

25 Right?

1 A. I see that, yes.

2 Q. Okay. And the next
3 paragraph -- you can read whatever you want,
4 but I just want to skip down to the last --
5 where it says -- it says, "Following the
6 voluntary phaseout."

7 Do you see that, sir?

8 A. Sorry, just a moment.

9 Yes, I see that.

10 Q. Okay. It says -- let's read
11 this together. This is what the EPA wrote --
12 has on their website today.

13 "Following the voluntary
14 phaseout of PFOS by the principal worldwide
15 manufacturer" -- and that's 3M, right?

16 A. That is my understanding.

17 Q. 3M was the principal worldwide
18 manufacturer of PFOS, right?

19 A. I guess I can't speak to
20 worldwide manufacture, I haven't investigated
21 that, but I see what EPA has written here.

22 Q. You have no reason to disagree
23 with the EPA on that particular point, do
24 you?

25 A. I do not.

1 Q. Okay. Let's keep reading.

2 It says, "EPA took prompt
3 regulatory actions in 2002 and 2007 under the
4 TSCA to limit any future manufacture or
5 importation of 271 of these chemicals,
6 essentially encompassing all of these PFAS
7 chemicals on the United States market."

8 Right?

9 A. Yes, I see that.

10 Q. Okay. So the EPA learns about
11 this chemical in everyone's blood, 3M gets
12 out of the business, and then EPA promptly
13 prohibits other companies from making the
14 same chemical, right?

15 A. Well, the -- I don't think
16 that's quite -- quite accurate that the
17 mechanism that EPA used was a Significant New
18 Use Rule. So once that manufacture was no
19 longer ongoing, EPA issued the SNUR, and then
20 if any company wanted to reenter the market,
21 they would need to notify the Agency so the
22 Agency could do a risk evaluation and put
23 controls in place, if necessary.

24 Q. Okay. But S-N-U-R is, SNUR, as
25 you call it, is part of TSCA, right?

1 A. Yes.

2 Q. Yeah. Okay.

3 And do you know why the EPA
4 implemented this rule intended to limit or
5 reduce other companies from making or
6 importing PFOS?

7 A. So I think we could go to the
8 preamble of the SNUR to look at EPA's
9 specific reasons. In general, it's so that
10 the Agency would have notice if anyone wanted
11 to reenter the market so that the Agency
12 would have the opportunity to assess those
13 risks and control them as necessary.

14 Q. Well, that's what the
15 regulation does. But do you know why EPA
16 took that action with respect to these
17 chemicals, including PFOS?

18 A. I guess I can't speak for the
19 Agency beyond what they've, you know,
20 articulated in their rule.

21 Q. Well, what do you think?
22 What's your understanding? You spent weeks
23 getting ready for this deposition.

24 Why did the EPA essentially ban
25 other companies from making this chemical

1 that 3M made hundreds -- you know, a hundred
2 million pounds of?

3 A. So my understanding based on
4 the documents that I've reviewed is that, you
5 know, 3M recognized -- or I'm sorry, EPA
6 recognized the phaseout activities and wanted
7 to put a check in place so that companies
8 could not resume those activities, to
9 present -- to prevent the potential for
10 future substantial risk -- or, I'm sorry,
11 unreasonable risk under TSCA.

12 Q. Sir, are you not aware that EPA
13 has publicly stated that the reason they took
14 this action is because these chemicals,
15 including PFOS, may be hazardous to human
16 health or the environment?

17 A. I see in -- up above that
18 they've identified concerns for persistence,
19 bioaccumulation and toxicity. I'm aware in
20 the documents that I have reviewed that EPA
21 didn't think that those were imminent
22 concerns, but they wanted to take regulatory
23 action to prevent future risks.

24 (Gerber 30(b)(6) Exhibit DL1357
25 marked for identification.)

1 QUESTIONS BY MR. MCWILLIAMS:

2 Q. Okay. Well, let's look at what
3 the EPA actually wrote. Let's look at
4 DL1357, which is the Federal Register when
5 they officially announced this new regulation
6 significantly reducing other's ability to
7 manufacture or import these chemicals.

8 Okay?

9 And if you could just pull
10 up -- highlight -- I mean, call out the left
11 column.

12 MR. ROTTENBERG: 145, Jon.

13 THE WITNESS: All right. I
14 have the document.

15 QUESTIONS BY MR. MCWILLIAMS:

16 Q. Okay. Down in the left-hand
17 column towards the bottom, where EPA's
18 explaining what they did, let's look at why
19 they did it.

20 It says, quote, "EPA believes
21 that this action is necessary because the
22 PFOSH component of these chemical substances
23 may be hazardous to human health and the
24 environment."

25 Did I read that correctly, sir?

1 A. Yes.

2 Could I have a minute to read a
3 little bit further in this one?

4 Q. You can do whatever you need to
5 do to answer my question.

6 But my next question is, does
7 that refresh your recollection, sir, as to
8 why the EPA took action to prevent other
9 companies from making these chemicals?

10 A. Just a moment. I'd like to
11 review a little bit further.

12 All right. I -- I -- thank you
13 for that time.

14 Can you repeat your question,
15 please?

16 Q. Yes, sir.

17 My question is, does that
18 refresh your recollection as to why the EPA
19 took this action to prevent other companies
20 from making PFOS?

21 A. Yes, I see that there, and I
22 think EPA explains its reasoning in a little
23 bit more detail later on.

24 Q. My question was whether or not
25 it refreshed your recollection. Either it

1 did or did not.

2 A. Sorry. It does.

3 Q. Okay. Thank you.

4 (Gerber 30(b)(6) Exhibit DL156
5 marked for identification.)

6 QUESTIONS BY MR. MCWILLIAMS:

7 Q. Well, if we want to discuss a
8 little bit more about EPA's reasoning and
9 thoughts on PFOS, let's pull up DL156,
10 please. If you could call up the Bates
11 numbers for him first, please, guys.

12 MR. ROTTENBERG: 85, Jon.

13 Tab 85.

14 THE WITNESS: Okay. I have
15 that.

16 QUESTIONS BY MR. MCWILLIAMS:

17 Q. Okay. Sir, do you recognize
18 this as a document you reviewed in
19 preparation for your deposition?

20 A. I do.

21 Q. Okay. And is this -- this is a
22 PowerPoint presentation created by the --
23 someone within the EPA specific to this topic
24 we've been discussing this morning?

25 A. Yeah. My understanding is

1 that, yeah, this is a presentation prepared
2 by someone on staff at the EPA for
3 presentation to the Naval Research
4 Laboratory.

5 Q. Okay. So let's just look at
6 the title. It says, "Phasing Out a Problem:
7 PFOS."

8 Is that the title on this
9 document, sir?

10 A. Yes.

11 Q. Does that indicate to you that
12 3M -- excuse me, that EPA was of the opinion
13 that PFOS was a problem at that point in
14 time?

15 A. I see that that's how it's
16 characterized in the title. I think what the
17 Agency means by that is described in more
18 detail later.

19 Q. Okay. So let's -- that's a
20 good lead-up. Let's go to the next page,
21 please.

22 Next page, please. Thank you.

23 And the title -- the slide is
24 titled, "What is PFOS?" And it's the
25 perfluorooctyl sulfonate, the acids, the

1 salts, the halides. It's manmade. It does
2 not occur in nature.

3 Is that accurate?

4 A. I see that that's asserted in
5 EPA's presentation. I haven't investigated
6 that myself, so that's beyond my area of
7 expertise.

8 Q. Sir, you're a chemical engineer
9 by training and you work at 3M, and you don't
10 know whether or not PFOS is a manmade
11 substance?

12 A. I know that it is a substance
13 that was manufactured by 3M. I guess I can't
14 speak to, you know, the totality of the
15 science and whether it could occur anywhere
16 else.

17 Q. You don't know if it's
18 naturally occurring, really?

19 A. Based on the documents that
20 I've reviewed, I've seen in EPA summaries
21 that they have asserted that it is strictly a
22 synthetic chemical.

23 Q. All right. Okay.

24 And it says it's been produced
25 since the 1950s; is that right?

1 A. I haven't investigated the full
2 production history of this substance, but I
3 see that that's what's reflected in EPA's
4 summary.

5 Q. But do you have -- based on the
6 totality of your knowledge, do you have any
7 reason to disagree with this statement that
8 EPA -- that it's been made since the 1950s?

9 A. I do not.

10 Q. And it says, "Made mostly by
11 3M."

12 Right?

13 A. Yes, I see that.

14 Q. Okay. Let's skip two more
15 pages. There's a slide titled, "Why is PFOS
16 a problem?"

17 Do you see that, sir?

18 A. Yes.

19 Q. Okay. And this EPA slide deck
20 says, "PFOS is a PBT chemical."

21 Did I read that correctly?

22 A. Yes.

23 Q. And PBT means it's persistent,
24 it's bioaccumulative and it's toxic, right?

25 A. That's the acronym, yes.

1 Q. Okay. And 3M was in possession
2 of information as early as 1980 that PFOS was
3 persistent, was a bioaccumulative compound,
4 and was toxic to the animals in which it was
5 tested, right?

6 A. I don't know that that
7 characterization is -- is correct, because
8 each one of those terms has definition behind
9 it with respect to TSCA. And especially, you
10 know, the toxicity is something that was
11 developed over time.

12 Q. Okay.

13 A. I've seen that reflected in the
14 TSCA 8(e) evaluations by the company.

15 Q. Let's put TSCA to the side.
16 Let's just use the common definition of these
17 terms.

18 Persistent means it doesn't
19 break down. That fluorine-carbon bond is
20 incredibly strong, is expected to last for
21 eons, right?

22 A. I understand that that's a very
23 stable bond that's resistant to degradation.

24 Q. And that's what's -- and that's
25 why PFOS is so persistent, because of that

1 carbon-fluorine bond, right?

2 A. I'm not an expert in the
3 chemistry, but that is my understanding.

4 Q. Okay. And 3M was aware that
5 PFOS contained that carbon-fluorine bond
6 since 1975, right, if not earlier?

7 A. So, yeah, 3M understood the,
8 you know, the chemical composition of it,
9 that substance.

10 Q. Okay. And we've already
11 discussed bioaccumulative compound, that
12 there was indicia of the slow elimination
13 rate, which is a function of half-life, which
14 is how you determine a bioaccumulative
15 potential of a compound in the 1970s, right?

16 A. So -- and again, I don't think
17 that's quite correct because, again, there
18 are definitions that go with these things.
19 You know, there are different indications of
20 bioaccumulation potential in the EPA's
21 guidance. It could include things like
22 bioconcentration factors in fish or
23 octanol-water partition coefficients, but the
24 elimination rate would be one consideration
25 in that evaluation.

1 Q. Okay. And they had evidence of
2 slow elimination in the 1970s for PFOS,
3 right?

4 A. Based on the documents I've
5 reviewed, I did -- I do recall seeing that
6 that was noted in worker blood levels with
7 information that EPA -- I'm sorry, that 3M
8 had collected.

9 Q. Okay. And also in the 1970s,
10 3M performed toxicology studies on rhesus
11 monkeys, rats and mice. 3M chose the doses
12 to expose those animals to, and based on the
13 results of those studies, 3M concluded that
14 PFOS should be regarded as toxic, correct?

15 A. I would defer to my toxicology
16 colleagues to really interpret the results of
17 those studies.

18 I am aware from my review of
19 those documents that that was a range finder
20 study where they were trying to dial in the
21 correct doses for the investigation that they
22 wanted to do.

23 And here again, the term
24 "toxic" is something that has a lot of
25 definition and guidance behind it, and that's

1 important.

2 Q. But based on your review of the
3 documents in preparation for today's
4 deposition, you did see documents, sir, where
5 3M representatives reviewed those toxicology
6 studies and concluded that PFOS should be
7 considered toxic, true?

8 A. I saw that they had reviewed
9 those -- reviewed those results and noted the
10 deaths. I am also aware of the TSCA 8(e)
11 evaluation where they did not conclude that
12 that represented substantial risk according
13 to EPA's guidance at the time.

14 MR. MCWILLIAMS: Move to strike
15 as nonresponsive.

16 QUESTIONS BY MR. MCWILLIAMS:

17 Q. I need you to respond to this
18 very particular point within my question,
19 which is 3M's interpretation of the
20 toxicology data in the 1970s.

21 True or false: In the 1970s,
22 representatives of the DuPont {sic}, upon
23 reviewing this toxicology data, concluded
24 that PFOS should be regarded as toxic? True
25 or false?

1 A. I'm sorry, could you repeat the
2 question? Did you say representatives of
3 DuPont?

4 Q. Yeah, I did, and I'm going to
5 fix it. I apologize.

6 True or false: In the 1970s,
7 representatives of 3M, after reviewing the
8 toxicology data, concluded that PFOS should
9 be regarded as toxic? True?

10 A. I recall from my review of the
11 documents that -- initial animal studies,
12 PFOS was categorized as moderately toxic.

13 Q. Okay. I can take that.

14 All right. So let's -- I don't
15 know if I should do the whole Guy and Taves
16 thing. I guess I should.

17 So in preparation for your
18 deposition today, sir, did you make an effort
19 to determine what 3M knew and when they knew
20 it with respect to PFOS in the blood of
21 non-occupationally exposed persons?

22 A. As part of my preparation, I
23 reviewed information related to 3M's TSCA
24 8(e) evaluations and its obligations under
25 TSCA. So that -- that would involve, you

1 know, specific studies being reviewed by the
2 TSCA 8(e) committee.

3 Q. Okay. Can you answer my
4 question?

5 A. I'm sorry, can you repeat the
6 question?

7 Q. Yes, sir.

8 In preparation for your
9 deposition, sir, did you make an effort to
10 determine what 3M knew and when they knew it
11 with respect to PFOS in the blood of the
12 general population?

13 A. Yes.

14 Q. Okay. And I'm just going to
15 give you an open-ended question.

16 Tell me what you learned.

17 A. So my understanding, based on
18 the documents I've reviewed, is that this is
19 information that evolved significantly over
20 time; that 3M was aware of the Guy and Taves
21 studies and reports of organic fluorine in
22 blood from pooled samples.

23 3M took measurements from its
24 own employees for worker exposure, so they
25 were aware of blood levels in some of its

1 employees who were exposed to the greatest
2 amounts of these substances.

3 My understanding is that the
4 analytical capability evolved significantly
5 over time. The ability to detect and analyze
6 with specificity came much later and resulted
7 in those specific findings that were
8 disclosed in 1998 as part of that submission.

9 Q. Okay. Let's get right into it.
10 Let's look at DL11, please.

11 MR. ROTTENBERG: Tab 16, Jon.

12 THE WITNESS: All right. I
13 have that one.

14 (Gerber 30(b)(6) Exhibit DL11
15 marked for identification.)

16 QUESTIONS BY MR. MCWILLIAMS:

17 Q. Okay. Do you recognize this as
18 one of the documents you reviewed in
19 preparation for today's dep?

20 A. I do.

21 Can I have just a moment to
22 reread it quick?

23 Q. I can't tell you no, but I
24 would rather you wait and let me ask a
25 question, because if we're going to have you

1 re-review every document, we're going to need
2 a couple more days. Okay? That's why I sent
3 these to you ahead of time.

4 Okay? Is that fair?

5 A. Okay.

6 Q. Okay. First of all, do you
7 recognize this as a document you reviewed in
8 preparation for your deposition?

9 A. Yes.

10 Q. Okay. And is this an internal
11 3M document dated August 20, 1975?

12 A. Yes.

13 Q. And do you see the subject at
14 the top right corner says, "Fluorocarbons in
15 human blood plasma"?

16 A. Yes.

17 Q. Okay. And it's marked
18 "confidential" as well; is that right?

19 A. Yes.

20 Q. And this is a record of a
21 telephone conversation that occurred on
22 August 14, 1975, from Mr. -- excuse me, a
23 Dr. William Guy from the University of
24 Florida; is that correct?

25 A. Yes.

1 Q. Sidenote, Dr. Guy worked with
2 my grandfather at the University of Florida
3 dental school.

4 Let's read along.

5 It says, "Dr. Guy called again
6 following up on the subject, see my earlier
7 memo, to see if they had any further ideas as
8 to the possible sources of the fluorocarbon
9 carboxylic acids found in human blood samples
10 from Texas and New York."

11 Did I read that correctly, sir?

12 A. Yes.

13 Q. And a telephone call is one of
14 the types of information that EPA says can be
15 reportable; is that correct?

16 A. That's correct.

17 Q. Okay. And at this point in
18 time, 3M was in the business of manufacturing
19 fluorocarbon carboxylic acids; is that
20 correct?

21 A. That's my understanding, yes.

22 Q. Okay. And this telephone call
23 is informing 3M that this investigator
24 believes that a chemical that 3M makes is in
25 the blood of the general population, correct?

1 A. And here's where I'd like just
2 a moment to reread the content here to make
3 sure that I accurately represent --

4 Q. You can do whatever you need to
5 do to answer my question, sir.

6 A. Thank you.

7 All right. I'm sorry, can you
8 please repeat your question?

9 MR. MCWILLIAMS: Carrie, would
10 you please read it back?

11 (Court Reporter read back
12 question.)

13 THE WITNESS: So my
14 understanding is that they had found
15 organic fluorine in pooled samples
16 from the general population.

17 QUESTIONS BY MR. MCWILLIAMS:

18 Q. So this is talking specifically
19 about fluorocarbon carboxylic acids, correct?

20 A. So what I read here is it
21 indicates that the fluorine is organic, and
22 the suspected species is fluorocarbon
23 carboxylic acid, with a C6 or C7 fluoroalkyl
24 group.

25 Q. Okay. So my question, sir:

1 Was this phone call that occurred on
2 August 14, 1975, an incidence of 3M being
3 provided information by an outside researcher
4 who believed a chemical manufactured by 3M
5 was present in the blood of the general
6 population?

7 A. So I guess I read this that
8 they're providing information that these
9 substances that they've identified in this
10 chemical category have been detected in
11 pooled samples from the general population.

12 Q. Okay. And at this point in
13 time, are you aware of any other companies
14 other than 3M that manufactured fluorocarbon
15 carboxylic acids?

16 A. I -- you know, I can't speak to
17 manufacturing activity of others companies.
18 I believe DuPont was also a manufacturer of
19 PFOA, but I don't know their manufacturing
20 history, so I guess I can't speak to that.

21 Q. I believe DuPont was purchasing
22 their PFOA from 3M, but we'll debate that
23 later.

24 A. Yeah. Sorry. And I shouldn't
25 speak to that because I -- I don't have

1 direct knowledge of their manufacturing
2 operations.

3 Q. Okay. But sitting here today,
4 are you aware of any other company, other
5 than 3M, that was manufacturing fluorocarbon
6 carboxylic acids in 1975?

7 A. I personally am not.

8 Q. Okay. If you go to the next
9 page, please.

10 First -- the top paragraph. It
11 says, "Somewhere he got the information that
12 3M's fluorocarbon carboxylic acids are used
13 as surfactants and wanted to know if they
14 were present in Scotchgard or other items in
15 general use by the public."

16 Did I read that correctly, sir?

17 A. Yes.

18 Q. And let me ask you this: Isn't
19 it true that as of 1975, 3M was indeed
20 manufacturing fluorocarbon carboxylic acids
21 that were in general use by the public?

22 A. My understanding is that
23 POSF-derived substances did go into
24 applications such as the Scotchgard products
25 and other applications.

1 Q. Okay. So these outside
2 researchers were asking 3M if 3M made these
3 types of chemicals.

4 And what's the next line in
5 this document, sir? What did 3M say in
6 response to these outside researchers?

7 A. So this reads, "We plead
8 ignorance" -- or "pled ignorance, but advised
9 him that Scotchgard was a polymeric material,
10 not an FC acid."

11 Q. Okay. And by "pled
12 ignorance," it means you play dumb. You
13 pretend to not know something you know the
14 answer to.

15 That's what that phrase means,
16 right, sir?

17 A. I guess I can't speak to what
18 the authors intended there, but in the
19 general meaning it's -- yeah, to plead
20 ignorance is not to -- yeah, to not share
21 information that you have.

22 (Gerber 30(b)(6) Exhibit LP207
23 marked for identification.)

24 QUESTIONS BY MR. MCWILLIAMS:

25 Q. Let's go to LP207, please.

1 MR. ROTTENBERG: 110, Jon.

2 THE WITNESS: And I'm sorry,
3 can I go back to your question on the
4 Scotchgard products?

5 QUESTIONS BY MR. MCWILLIAMS:

6 Q. Sir, I'm sure if there's any
7 clarification, Mr. Woods will ask those. My
8 time is limited, so I'm going to proceed to
9 the next document, please.

10 Do you have LP207 in front of
11 you?

12 A. I do.

13 Q. Okay. And do you recognize
14 this as a document you reviewed in
15 preparation for your deposition today?

16 A. Yes, I do.

17 Q. Okay. And this is dated
18 August 22, 1975; is that right?

19 A. Yes.

20 Q. And that's approximately one
21 week subsequent to the prior document we were
22 just discussing, the phone call from Dr. Guy?

23 A. Yes, that's correct.

24 Q. Okay. If you look at the top
25 right corner, it says this is a "telephone

1 call from Dr. Warren Guy, University of
2 Florida, regarding fluorochemical in human
3 blood."

4 Did I read that correctly?

5 A. Yes.

6 Q. Okay. And you see -- you can
7 see all the people that received a copy of
8 this document, including 3M's general
9 counsel; is that right?

10 A. Yes, I see that.

11 Q. So the lawyers at 3M were aware
12 of whatever's discussed in this document; is
13 that fair?

14 A. I see that an attorney was on
15 the cc list. I guess, you know, I can't
16 speak to, you know, his review or his
17 knowledge.

18 Q. Okay. Let's read this
19 together.

20 It says, "Dr. Guy, who is
21 located at the University of Florida, was
22 calling from the University of Rochester,
23 New York, where he and the other author of
24 the paper entitled, quote, 'Characteristics
25 and Concentrations of Organic Fluorocompounds

1 Found in Human Tissues,' end quote, were
2 finalizing their preparations. After
3 reviewing the background experimental
4 information, Dr. Guy indicated that they were
5 attempting to, quote, 'run down' the source
6 of organic fluorine so they could make a more
7 specific report when they give their paper at
8 the national ACS meeting in Chicago this
9 coming Tuesday."

10 Did I read that correctly, sir?

11 A. Yes.

12 Q. Okay. The next paragraph, it
13 says, "I indicated to Dr. Guy that he was
14 asking me to speculate in an area where one
15 should definitely not speculate. He asked me
16 if it would be possible for the residues that
17 he had found in 98 of a hundred people
18 sampled could have come from Scotchgard."

19 Did I read that correctly, sir?

20 A. Yes.

21 Q. And Scotchgard is one of those
22 POSF-derived products that can degrade or
23 metabolize to PFOS in blood, right?

24 A. So this is one of the
25 clarifications that I wanted to make to my

1 earlier answer.

2 Q. I need you to answer -- hang
3 on. I need you to answer my question and not
4 give clarifications. Okay? This is
5 important.

6 A. So, I'm sorry, could you repeat
7 the question?

8 MR. WOODS: Can you repeat the
9 question?

10 QUESTIONS BY MR. MCWILLIAMS:

11 Q. The question is whether or not
12 Scotchgard is a POSF-based product that we
13 already discussed previously can degrade or
14 metabolize to PFOS in blood.

15 A. So my understanding is that
16 POSF derivatives were used in the manufacture
17 of Scotchgard products.

18 What I wanted to say earlier is
19 I am not familiar with the specific mixture
20 composition of the final Scotchgard product.

21 Q. Okay. That's fine. Thank you.

22 It continues. It says, "I told
23 him that Scotchgard contained no materials
24 that were likely to produce the
25 perfluorocarboxylic acid derivatives they

1 claim to have found. He asked me if we
2 manufactured perfluorooctanoic acid. I
3 indicated that we did. He asked for chemical
4 identification of our overall product line.
5 I advised him that our products were
6 proprietary but referred him to Volume V of
7 Simons for chemical background. He said he
8 had already read this, and it was not
9 specific enough."

10 Did I read that correctly, sir?

11 A. Yes.

12 (Gerber 30(b)(6) Exhibit BB424
13 marked for identification.)

14 QUESTIONS BY MR. MCWILLIAMS:

15 Q. Okay. Let's go to the next
16 one. This one is BB424.

17 MR. ROTTENBERG: 173, Jon.

18 THE WITNESS: Okay. I have
19 that.

20 QUESTIONS BY MR. MCWILLIAMS:

21 Q. All right. Sir, do you
22 recognize Exhibit BB424 as a document you
23 reviewed in preparation for your deposition
24 today?

25 A. Yes.

1 Q. Okay. And is this another memo
2 memorializing a telephone call between
3 Dr. Taves and people within 3M?

4 A. Yes.

5 Q. And this is dated September 22,
6 1975; is that right?

7 A. That's correct.

8 Q. And again, this is regarding
9 fluorochemicals in blood, right?

10 A. Yeah. It says at the beginning
11 he's part of Dr. Taves' -- one of the members
12 of the research team that is working on the
13 analysis of fluorochemicals in blood.

14 Q. Okay. Yeah, in the top right
15 corner, you can see it's regarding -- there's
16 a little regarding line -- fluorochemicals in
17 blood?

18 A. Oh, yes, I see that.

19 Q. Let's read the substance.

20 It says, "Dr. Taves is one of
21 the members of the research team that is
22 working on the analysis of fluorochemicals in
23 blood. He called to ask several questions
24 and solicit our help. He claims that their
25 findings to date indicate that the 20 part

1 per billion of fluorochemicals they have
2 found in human blood is either a derivative
3 or a perfluorocarboxylic acid or a
4 perfluorosulphonic acid. They are trying to
5 determine specifically which compound or
6 compounds are involved. He wants to know if
7 he could submit a sample to us for evaluation
8 by our analytical people."

9 Did I read that correctly, sir?

10 A. Yes.

11 Q. Okay. So based on this, this
12 researcher is providing information to 3M
13 that they believe two chemicals manufactured
14 by 3M could be the organic fluorine that
15 they've observed in the blood of the general
16 population, correct?

17 A. I don't read in the request
18 that they've identified 3M as the
19 manufacturer, but they have two potential
20 structures that it could be that they're
21 asking for further analysis.

22 Q. Right.

23 And you're absolutely right,
24 this document does not state that 3M made
25 these chemicals. But it is true that 3 -- at

1 this point in time, 3M made those chemicals,
2 correct?

3 A. My understanding is that 3M did
4 manufacture PFOS and POSF-based chemistry at
5 this time.

6 Q. Okay. And PFOA, which is
7 perfluorooctanoic acid, right?

8 A. Yes, that's my general
9 understanding.

10 Q. Okay. Let's keep reading.

11 It says, "Dr. Taves and his
12 group have been studying the various FDA
13 petitions based, I presume, on the
14 supposition that the fluorochemical found in
15 the blood might be coming from paper or
16 paperboard. He wanted to know if we would
17 open up the contents of our FDA petition to
18 him. I gave him a very firm no in this
19 regard based on the fact that the petition
20 contains our confidential method of
21 manufacturing and yield information."

22 Did I read that correctly, sir?

23 A. Yes.

24 Q. And you're aware, sir, that at
25 this point in time 3M manufactured a product

1 called FC-807, tradename was Scotchban, which
2 had been FDA approved for food contact
3 packaging, correct?

4 A. That's my general understanding
5 based on the documents I've reviewed.

6 Q. Okay. And, sir, you understand
7 now it is well-established that FC-807 was a
8 major source of PFOS in the blood of the
9 general population?

10 A. I -- I'm sorry, I don't have
11 that understanding based on the documents
12 that I've reviewed. FDA-regulated
13 applications are not subject to the scope of
14 TSCA, and so I really didn't get into that
15 information.

16 Q. Well, what is your
17 understanding of the source of PFOS in the
18 blood of the general population?

19 A. And I think, you know, 3M's
20 toxicology, environmental experts could best
21 speak to that.

22 Q. And we'll speak to them, but
23 right now I'm speaking to you.

24 So I need you, Mr. Gerber, to
25 tell me: What is your understanding of the

1 source of PFOS in the blood of the general
2 population?

3 A. My understanding is that
4 industrial emissions and POSF-based chemistry
5 in products can degrade to PFOS and that
6 that's a source of exposure.

7 Q. And when you say "products,"
8 does that include the paper packaging
9 material FC-807?

10 A. My understanding is FC-807 was
11 one of the POSF-based chemistries.

12 Q. Do you have any reason to
13 believe FC-807 was not a source of PFOS in
14 the blood of the general population?

15 A. Again, I'm not the best person
16 to speak to that, so I don't have -- I guess
17 I don't have a -- a basis for -- for
18 answering that yes or no. But I -- I'm
19 sorry, could you -- can you repeat the
20 question?

21 Q. Yeah, sir, and I -- listen,
22 you're right, there's always better people
23 that know more things, but today is my chance
24 to talk to you --

25 A. Yes.

1 Q. -- so I need you just to give
2 me your best answers.

3 Okay?

4 Do you have any reason today to
5 dispute that a source of PFOS in the blood of
6 the general population was 3M's product
7 FC-807?

8 A. Yeah. Since this is not my
9 area of expertise, I do not have a reason to
10 dispute that.

11 Q. Okay. That works.

12 (Gerber 30(b)(6) Exhibit LP231
13 marked for identification.)

14 QUESTIONS BY MR. MCWILLIAMS:

15 Q. Let's go to LP231, please.

16 MR. ROTTENBERG: 122, Jon.

17 MR. WOODS: And, Ned, when you
18 get done with this document, can we
19 take another break?

20 MR. MCWILLIAMS: Yeah, sure.

21 THE WITNESS: What was the tab
22 number? Sorry.

23 MR. ROTTENBERG: 122. 122.

24 THE WITNESS: Okay. Thank you.

25 I have that.

1 QUESTIONS BY MR. MCWILLIAMS:

2 Q. Okay. Do you have the document
3 in front of you, sir?

4 A. Yes, I do.

5 Q. And is this one of the
6 documents you reviewed in preparation for
7 your deposition?

8 A. I believe so, yes.

9 Q. Okay. And you see the top
10 right corner? Its subject is fluorochemicals
11 in blood, dated August 9, 1977; is that
12 right?

13 A. Yes.

14 Q. And it's from Mr. Belisle
15 within 3M sending a memo to others within 3M;
16 is that correct?

17 A. Yes.

18 Q. Including a Mr. Scheuerman, who
19 was kind enough to save this for us.

20 Do you see his stamp on there
21 in the top -- in the right corner?

22 A. Yes, I do.

23 Q. Okay. And he's a lawyer at 3M,
24 or he was a lawyer at 3M.

25 Do you know that?

1 A. I did not.

2 Q. Okay. Well, let's look at what
3 was written to him that he kindly saved.

4 "Since my letter on July 29,
5 1977, on the published report of
6 perfluorooctanoic acid in human plasma, we
7 have purchased and received a tape recording
8 of Guy's presentation, and I quote."

9 Did I read that correctly, sir?

10 A. Yes.

11 Q. Okay. And this referred -- the
12 published report is referring to the Guy and
13 Taves publication you told me earlier that
14 you thought the EPA probably read, right?

15 A. I didn't say that I thought EPA
16 read it. I noted that it was in the public
17 literature at the time.

18 Q. Okay. But in this 3M document,
19 they characterize that publication as a
20 report of perfluorooctanoic acid in blood.
21 PFOA, not PFOS, right?

22 A. So I see here from the quote,
23 "The fluorine-containing part of the
24 compounds in the isolate from human plasma
25 resemble perfluorooctanoic acid."

1 Q. And then I'm also talking about
2 above that where 3M -- 3M, who characterized
3 this report by Guy and Taves, that it was
4 about PFOA, not PFOS, right?

5 A. I read that there. That seems
6 to be, you know, the summary of the
7 information in the quote below.

8 Q. Okay. So let's read what the
9 quote says.

10 It says, "From analysis of the
11 F/NMR spectrum, the fluorine-containing part
12 of the compound in the isolate, from human
13 plasma, resembled perfluorooctanoic acid."

14 Which is PFOA, right?

15 A. Correct.

16 Q. "Derivatives of this compound
17 are widely used as surfactants. No
18 toxicological studies of these compounds
19 appear to have been published. A complete
20 list of all 11 products in which these
21 compounds are presently being incorporated is
22 not generally available. At least in the
23 past, these have been used in floor waxes,
24 wax paper, leather conditioning agents and
25 fabric conditioning agents. Two tradenames

1 which may come to mind are Scotchgard and
2 Zepel. Compounds of this nature might be
3 expected to bind to plasma albumin because of
4 the resemblance to fatty acid normally
5 bound."

6 Did I read that correctly,
7 except for my butchering of albumin?

8 A. Yes.

9 Q. Okay. And at the very end it
10 says -- well, let's keep reading. It says,
11 "Human plasma may contain a number of types
12 of organic fluorocompounds, each distinct
13 from the one characterized. We found
14 multiple fluorine-containing peaks in silicic
15 acid chromatograms. That the major part of
16 organic fluorine in human plasma is a
17 widespread environmental contaminant is
18 consistent with our findings."

19 Did I read that correctly, sir?

20 A. Yes.

21 Q. And these authors of this paper
22 specifically identified Scotchgard as a
23 potential product responsible for the
24 chemical they're finding in the blood of the
25 general population, right?

1 A. They've identified it as
2 products using that class of chemistry.

3 Q. Right. Okay.

4 So once again, 3M has provided
5 information where outside researchers believe
6 a 3M product is responsible for widespread
7 environmental contamination, right?

8 A. Well, and here -- you know, the
9 summary statement there is organic fluorine.
10 The paragraph before that talks about a
11 number of types of organic fluorocompounds,
12 each distinct from the one characterized, so
13 that the conclusion appears to be kind of
14 general with respect to organic fluorine.

15 Q. The conclusion is that there is
16 a widespread environmental contamination in
17 human blood, right?

18 A. So I see the conclusion from
19 the Guy -- Guy's presentation, the major part
20 of organic fluorine in human plasma is a
21 widespread environmental contaminant, and
22 that was consistent with their findings.

23 Q. Okay. And again, this is the
24 type of information that the EPA says is
25 reportable, right? Information you obtained

1 at a meeting, right?

2 A. So I guess I want to be
3 specific with the response there.

4 So, you know, information
5 that's received at a meeting or information
6 that's provided verbally can be reportable
7 for TSCA 8(e). It should be considered and
8 evaluated for reporting.

9 MR. MCWILLIAMS: And I'm sorry,
10 Craig, we were supposed to take a
11 break, and I just kind of plowed
12 through, so let's --

13 MR. WOODS: I thought we were
14 done with the document. Why don't we
15 take a break now.

16 MR. MCWILLIAMS: Yeah. And
17 again, can we keep it short, like six,
18 seven minutes?

19 MR. WOODS: Yeah, that sounds
20 good.

21 VIDEOGRAPHER: The time is
22 11:39 a.m. We're off the record.

23 (Off the record at 11:39 a.m.)

24 VIDEOGRAPHER: We're back on
25 the record. The time is 11:47 a.m.

1 QUESTIONS BY MR. MCWILLIAMS:

2 Q. Mr. Gerber, are you -- can we
3 continue?

4 A. Yep.

5 Q. Did you have an opportunity to
6 meet with 3M's counsel over the break?

7 A. No.

8 Q. Okay. So there's none of your
9 prior testimony you'd like to change?

10 A. Not at this time.

11 Q. Okay. Okay. So we've been
12 discussing that 3M was notified by outside
13 researchers that they believed they found a
14 manmade chemical in the blood of the general
15 population, and it may be a manmade chemical
16 made by 3M; is that fair?

17 A. Yeah. My understanding based
18 on the documents is that, you know, they had
19 reviewed -- yeah, or they had data from
20 pooled blood samples in the general
21 population, they had tentatively identified
22 substances, and some of those communications
23 specifically referenced Scotchgard.

24 Q. Okay. And then those
25 researchers published their findings; is that

1 correct?

2 A. That's my understanding, yes.

3 Q. And in the publication, it
4 contained what's called an NMR spectra. It's
5 a visual depiction of the chemical structure
6 that they observed in the -- in the pooled
7 blood samples, correct?

8 A. That's my understanding, yes.

9 Q. And the outside researchers
10 supplied a copy of that paper and the spectra
11 to 3M; is that correct?

12 A. I believe so, based on the
13 documents I've reviewed.

14 Q. And then in response,
15 researchers within 3M, specifically
16 Dr. Richard Newmark, took the spectra of what
17 those outside researchers found in the blood
18 of the general population and then compared
19 it with the NMR spectra of various 3M
20 products; is that correct?

21 A. Yeah. Based on my review of
22 that memo, Dr. Newmark had specific
23 structures or 3M substances that he reviewed
24 against that NMR spectra from Guy and Taves.

25 (Gerber 30(b)(6) Exhibit DL9

1 marked for identification.)

2 QUESTIONS BY MR. MCWILLIAMS:

3 Q. Okay. And let's pull that up.

4 That's DL9.

5 Do you recognize DL9, sir, as

6 the document we were just discussing?

7 MR. ROTTENBERG: Tab 114, Jon.

8 THE WITNESS: Just a moment

9 while I find that.

10 I don't think that's the

11 correct tab. Did you say 113?

12 QUESTIONS BY MR. MCWILLIAMS:

13 Q. 119.

14 A. 119. Sorry.

15 MR. ROTTENBERG: I said 114.

16 MR. MCWILLIAMS: Oh, well,

17 let's see if it's 119. You guys

18 should be scared.

19 THE WITNESS: 114. Got it.

20 QUESTIONS BY MR. MCWILLIAMS:

21 Q. All right. Sir, do you
22 recognize this as a document you reviewed in
23 preparation for your deposition today?

24 A. Yes, I do.

25 Q. Okay. And this is relevant to

1 the topic you've been asked to discuss with
2 us today?

3 A. Yes.

4 Q. Okay. And so let's look at
5 this.

6 So this is dated November 6,
7 1975; is that right?

8 A. Yes.

9 Q. And it's -- the title is
10 "Central Analytical Laboratory."

11 That's a laboratory within 3M;
12 is that correct?

13 A. Yes, that's correct.

14 Q. Okay. And it's signed by
15 Richard Newmark.

16 He's a 3M employee, right?

17 A. That's my understanding, yes.

18 Q. Okay. And it says, "The
19 following samples were submitted for analysis
20 by fluorine NMR spectroscopy."

21 Did I say that right?

22 A. Yes.

23 Q. Okay. And we don't have to get
24 into each of them, but the ten samples, the
25 ten samples were of -- samples of 3M product;

1 is that correct?

2 A. I -- I recognized some of those
3 formulas and code names as being 3M -- 3M
4 chemicals.

5 Q. Including PFOS; is that
6 correct?

7 A. Yes.

8 Q. Okay. And so essentially what
9 Dr. Newmark did was he took -- he took the
10 same machine, the NMR machine that those
11 outside researchers ran on pooled blood, and
12 then he ran that same machine on ten
13 different 3M products, right?

14 A. That's my understanding.

15 Q. And then he compared the
16 results of the NMR -- he generated an NMR
17 spectra for each of those ten products,
18 right?

19 A. Yeah. Based on this summary,
20 that's what I would infer that he had done.

21 Q. Okay. And then he compared the
22 result, that spectra, for each those ten
23 products with the spectra of what those
24 outside researchers found in the blood of the
25 general population, correct?

1 A. Again, that appears to be what
2 this document summarizes.

3 Q. And based on that analysis,
4 Dr. Newmark concluded that the spectra for
5 PFOS most closely resembles the spectra of
6 what's found in the blood of the general
7 population, fair?

8 A. Yeah, his conclusion is of --
9 of the substances that he compared, it was
10 PFOS that most closely resembled the NMR
11 spectrum from Guy and Taves, which was based
12 on their analysis of pooled samples from the
13 general population.

14 Q. And that's the same PFOS that
15 3M told the EPA in 1998 was in the blood of
16 the general population, right?

17 A. It is the same substance.

18 Q. Yeah.

19 A. PFOS is -- yeah, that's the
20 C8F17SO3H formula mentioned here.

21 Q. So as of November 6, 1975, 3M
22 possessed information indicating a chemical
23 it made, PFOS, had been reported to be in the
24 blood of the general population, fair?

25 A. So I -- you know, I guess --

1 Q. Is that fair? I don't want --

2 A. I'm not sure -- I'm not sure
3 that's entirely accurate.

4 You know, Dr. Newmark here is
5 saying that this is -- was the closest match
6 of the substances that he identified, but I
7 guess I can't speak to the analytical
8 chemistry as to how definite that conclusion
9 was.

10 I have reviewed other documents
11 as part of my preparation, one coming from
12 DuPont where they had done their own analysis
13 and concluded that it was PFOA.

14 MR. MCWILLIAMS: Move to strike
15 as nonresponsive.

16 QUESTIONS BY MR. MCWILLIAMS:

17 Q. Sir, according to this
18 document, as of November 6, 1975 -- and I
19 understand that all data has its strengths
20 and weaknesses. That's true for science,
21 right?

22 But as of November 6, 1975, 3M
23 was in possession of information indicating a
24 chemical it made, PFOS, had been found in the
25 blood of the general population; true or

1 false?

2 A. And I guess the way that that
3 question is phrased, I think I'd have to say
4 false because I can't say that that was a
5 definitive conclusion at that point.

6 Q. Okay.

7 A. There were issues with the Guy
8 and Taves study, and then, again, I can't
9 speak to the certainty of the conclusion in
10 this memo.

11 Q. Okay. So listen carefully.
12 I'm not asking if it was a definitive
13 conclusion.

14 This was a data point, it was
15 an indication, that a chemical 3M made, PFOS,
16 had been found in the blood of the general
17 population. It may have been wrong, they may
18 have been completely wrong, but there was
19 still information provided to 3M at this date
20 indicating that, right?

21 A. I guess I would say there's
22 information that was provided to 3M that
23 suggested the possibility.

24 Q. Okay. Thank you.

25 Let's go on to LP1389, please.

1 1389. I'm sorry, LP1389. I may have said
2 DL.

3 JOE WILLS: I don't have an
4 LP1389. I do have a DL.

5 MR. MCWILLIAMS: Yeah, pull
6 that up. Let's see what it looks
7 like. Maybe I -- yeah, that's it.

8 I stand corrected. So DL1389,
9 please.

10 MR. ROTTENBERG: Tab 38.

11 THE WITNESS: Okay. I have
12 that.

13 (Gerber 30(b)(6) Exhibit DL1389
14 marked for identification.)

15 QUESTIONS BY MR. MCWILLIAMS:

16 Q. Okay. And do you recognize
17 this as a document you reviewed in
18 preparation for your deposition today?

19 A. Yes.

20 Q. Okay. And is this a technical
21 report summary dated -- it's two dates, but
22 the first date is May 4, 1977?

23 A. I see that in the upper right
24 corner.

25 Q. Okay. And then there's a stamp

1 date dated June 8, 1977; is that correct?

2 A. Yes.

3 Q. Okay. And it says, "The
4 current objective" -- and I'm sorry, this is
5 by Drs. Belisle and Hagan.

6 They're laboratory folks at 3M;
7 is that right?

8 A. That's my understanding.

9 Q. And the project title is
10 "Determination and Characterization of Trace
11 Fluorochemicals."

12 Did I read that correctly?

13 A. Yes.

14 Q. Okay. And the objective
15 number 1 to develop method of analysis for
16 PFOS in blood, right?

17 A. Yes.

18 Q. Okay. If you go to the next
19 page, please. And you can read whatever you
20 want, but if you skip down to the bottom, you
21 can see Dr. Belisle and Dr. Hagan write, "In
22 brief, very little data exists in the
23 literature on fluorochemical levels in humans
24 and animals. One report does suggest the
25 presence of PFOS in humans, and it is our

1 purpose to substantiate or refute this
2 observation."

3 Did I read that correctly, sir?

4 A. Yes.

5 Q. Okay. And was that observation
6 ever refuted, to your knowledge?

7 A. Based on the documents I've
8 reviewed -- I guess I can't speak to, you
9 know, all of the science on that, but I have
10 not seen that in the documents that I have
11 reviewed.

12 Q. Okay. So you've seen no
13 evidence of this observation of PFOS in the
14 blood of the general population being
15 refuted?

16 A. I have not seen that within the
17 documents that I've reviewed.

18 Q. Okay. So as of 1977 through
19 all times up to 1998, you saw no evidence
20 refuting this observation that was made
21 available to 3M in 1977 that PFOS was in the
22 blood of the general population, fair?

23 A. I have not, during -- in the
24 documents that I have reviewed and, you know,
25 not knowing the totality of the science, but

1 I have not seen any information that, you
2 know, absolutely refuted that or would, I
3 guess, how would you say that, affirmatively
4 refuted that observation.

5 Q. And you made your best efforts
6 to -- to review all the documents relevant to
7 this topic, right?

8 A. With respect to 3M's
9 understanding and obligations under TSCA,
10 yes.

11 Q. Right.
12 Specific to what it knew and
13 when it knew it about PFOS in the blood of
14 the general population and when to report it,
15 right?

16 Well, strike that. I'll
17 withdraw that.

18 Let's move along. Let's go to
19 DL349.

20 And actually, if we go back to
21 the Newmark document for a second, the
22 November 6, 1975, if we can pull that up.

23 MR. WOODS: That was 114, if
24 you recall, the tab.

25 THE WITNESS: Yeah, I still

1 have that.

2 QUESTIONS BY MR. MCWILLIAMS:

3 Q. One of the ten products that 3M
4 compared the spectra to was PFOA, right?

5 A. I believe that's correct based
6 on the structures -- or the formulas listed
7 here.

8 Q. Okay. So Dr. Newmark looked at
9 the visual depiction of PFOA and PFOS in
10 others and compared it with the visual
11 depiction of whatever chemical was in the
12 blood of the general population and
13 determined it looked most -- it most closely
14 resembled PFOS and not PFOA, right?

15 A. I see that that's his
16 conclusion in this memo.

17 Q. Okay. Thank you.

18 All right. Let's go to DL349,
19 please.

20 Now, before we get into this
21 document, upon this report from Dr. Guy and
22 Taves, 3M went out and obtained blood from
23 blood banks around the United States,
24 correct? From the Red Cross specifically?

25 A. I'm sorry, which -- which tab

1 is this?

2 MR. ROTTENBERG: It's --

3 MR. MCWILLIAMS: I'm not asking
4 about a document right now.

5 THE WITNESS: Oh.

6 MR. WOODS: Maybe reask your
7 question, Ned.

8 QUESTIONS BY MR. MCWILLIAMS:

9 Q. Yeah.

10 So, sir, subsequent to this
11 report by Guy and Taves that there's this
12 manmade organic fluorine in people's blood,
13 did 3M go out and acquire blood from other
14 blood banks around the country, specifically
15 from the Red Cross?

16 A. Based on the documents I've
17 reviewed, I do recall mention of that. I
18 don't recall off the top of my head when that
19 occurred.

20 Q. Okay. And 3M did analysis of
21 that blood, correct?

22 You're on mute. You're on
23 mute.

24 A. Sorry about that.

25 That's my understanding. I'd

1 want to go back to those specific studies to
2 be able to speak more specifically to them.

3 Q. So 3M -- but the point is, 3M's
4 understanding of what chemicals was in the
5 blood of the general population was not
6 limited to the work done by Guy and Taves.
7 3M went out and obtained blood banks from
8 other cities than those used by Guy and
9 Taves, right?

10 A. That's my understanding.

11 Again, I don't remember the
12 specifics of those or the timing off the top
13 of my head, but I do recall that 3M initiated
14 additional investigation.

15 Q. And 3M also obtained blood from
16 what they described as rural villagers in
17 China, correct?

18 A. I do recall that from the
19 documents I reviewed.

20 Q. And 3M laboratory folks did
21 analysis of that blood as well, correct?

22 A. I believe that's correct.

23 Q. Okay. Then let's look at --
24 let's look at what they found in the blood of
25 the rural Chinese.

1 Can you pull up DL349, please?

2 MR. ROTTENBERG: 115. 1-1-5.

3 THE WITNESS: All right. I

4 have that.

5 (Gerber 30(b)(6) Exhibit DL349

6 marked for identification.)

7 QUESTIONS BY MR. MCWILLIAMS:

8 Q. And, sir, is this a document
9 you reviewed in preparation for your
10 deposition today?

11 A. Yes.

12 Q. Okay. And you'll see that this
13 is an internal 3M memo dated February 6,
14 1979; is that right?

15 A. Yes.

16 Q. And this is -- came from that
17 same lab we had been talking about, Dr. Jon
18 Belisle; is that correct?

19 A. Yes.

20 Q. And the subject is "fluoride
21 analysis of China serum," right?

22 A. Yes.

23 Q. Serum is just another word for
24 blood, right?

25 A. That's my understanding, yes.

1 Q. Okay. Let's read this
2 together.

3 It says, "Eight human serum
4 samples were received from donors understood
5 to live in rural China. All samples have
6 been analyzed for organic and inorganic
7 fluoride, reported below, and sufficient
8 sample remains to characterize, at a later
9 date, for FC-95."

10 Did I read that correctly?

11 A. Yes.

12 Q. And FC-95 is an internal code
13 within 3M for PFOS, correct?

14 A. That's my understanding, yes.

15 Q. Okay. Let's go to the next
16 page, please.

17 It says, "In addition to the
18 organic and inorganic fluoride values, the
19 samples will be analyzed by the FC-95 method
20 after we refine the FC-95 analysis. You will
21 recall that past samples of Red Cross plasma
22 have analyzed to contain trace levels of
23 FC-95, but we are not sure if the level seen
24 is truly FC-95 or an artifact of sample
25 preparation and analysis."

1 Did I read that correctly, sir?

2 A. Yes.

3 Q. So as of 1979, separate and
4 apart from the report of Guy and Taves
5 finding organic fluorine in blood samples, 3M
6 did its own analysis of Red Cross blood
7 samples and determined that there's PFOS
8 present, correct, according to this
9 document -- or excuse me, let me -- that PFOS
10 may be present.

11 There's some uncertainty with
12 the lab, fair?

13 A. Yeah, so I see that they wanted
14 to reanalyze samples after they had refined
15 their methods for FC-95.

16 So, yeah, I would say that the
17 possibility had been recognized from the Guy
18 and Taves information.

19 Q. Okay. The possibility had been
20 recognized from the Guy and Taves
21 information.

22 But separate and apart from
23 that, 3M went out and got Red Cross blood,
24 did whatever lab tests they thought would
25 tell them whether or not PFOS was in the

1 blood or not, and the lab test said, yeah,
2 there's PFOS in there.

3 They're not sure if the lab was
4 right, but that's what the lab results were
5 according to this document, right?

6 A. The document -- I guess in the
7 table, as the results are presented, it's
8 presented as organic fluoride and inorganic
9 fluoride.

10 Q. Sir, sir, your job is not to
11 defend the company today. Okay? I'm not
12 talking about the results for the fluoride.
13 I'm talking about this reference to Red Cross
14 blood plasma. Okay?

15 The table is about the Chinese
16 samples. I'm not talking about that. I'm
17 talking about Red Cross American blood.
18 Okay?

19 Does this document not indicate
20 to you that 3M was in possession of
21 additional information indicating the
22 presence of PFOS in the blood of Americans?

23 A. I guess phrased that way, I
24 guess I would say no, because what was
25 measured here was organic and inorganic

1 fluorine, and the method to identify FC-95 or
2 analyze that more specifically was still in
3 development at this point. That's my
4 understanding of this document.

5 Q. Okay. You said what's measured
6 here.

7 You were talking about the
8 Chinese samples?

9 A. So -- well, and -- so at the
10 bottom of this page, one would conclude
11 there's a very low level of organic fluoride
12 present, with the inorganic fluoride levels
13 higher than generally seen in past Red Cross
14 samples.

15 Q. Sir --

16 A. I -- can I have just a moment
17 to read this a little bit further?

18 Q. Sure.

19 A. Thank you.

20 Q. And, Joe, if you would
21 underline that sentence that begins with "You
22 will recall that past samples," that whole
23 sentence, please.

24 A. So, I'm sorry, can you ask your
25 question again now?

1 Q. Yes, sir.

2 Do you see the document
3 highlighted and underlined on the screen in
4 front of you, sir?

5 A. I do.

6 Q. Does that sentence make
7 reference to Red Cross blood that 3M had
8 analyzed in its laboratory?

9 A. That's my understanding of this
10 reference.

11 Q. Okay. Does that sentence make
12 reference to testing that blood for PFOS?

13 A. It does refer to FC-95, which
14 is PFOS.

15 Q. And does that sentence indicate
16 that the laboratory results -- strike that.

17 And does that underlined
18 sentence indicate that a 3M laboratory
19 observed PFOS, or what they believed to be
20 PFOS, in the blood of the Red Cross samples?

21 A. So I haven't reviewed those
22 study results, and, you know, I guess I can't
23 speak to those within this summary --

24 Q. I'm asking you about that
25 sentence --

1 A. Yeah.

2 Q. -- and only that sentence, sir.

3 Does that sentence indicate to
4 you that 3M analyzed Red Cross blood for
5 PFOS, and the lab reported that there was
6 indeed PFOS in that blood?

7 A. This sentence states that it
8 was analyzed for PFOS, and it was uncertain
9 whether the level seen was truly PFOS or an
10 artifact of sample preparation and analysis.

11 Q. Right. I can take that.

12 All right. Let's move on to
13 LP68.

14 MR. ROTTENBERG: Tab 78.

15 THE WITNESS: All right. I
16 have that document.

17 Can I have just a moment to
18 scan through it, please?

19 (Gerber 30(b)(6) Exhibit LP68
20 marked for identification.)

21 QUESTIONS BY MR. MCWILLIAMS:

22 Q. Yes, sir.

23 A. Okay.

24 Q. Sir, is this a document you
25 reviewed in preparation for your deposition?

1 A. I don't recall this one
2 specifically.

3 Q. Okay. Let's go through it
4 together. Let's see if this refreshes your
5 recollection.

6 Do you see this is a timeline
7 of sorts beginning in November '75?

8 A. Yes.

9 Q. Okay.

10 And, Joe, if you could just not
11 blow up the whole document. We can just kind
12 of blow up just the top paragraph and then we
13 can move down?

14 There we go. Okay.

15 So let's look at this together.
16 It says, "In 1975, using a preconcentration
17 method and NMR, Guy and Taves report presence
18 of organic fluorine compounds in blood bank
19 blood from around the country."

20 Did I read that correctly, sir?

21 A. Yes.

22 Q. "As an average concentration of
23 about .03 part per million organic fluorine,
24 which corresponds to about 45 parts per
25 billion PFOS."

1 Did I read that correctly, sir?

2 A. Yes.

3 Q. And it says, "Their work was
4 first reported at a conference, the ACS, and
5 subsequently published in 1977."

6 Correct?

7 A. Yes, I see that written there.

8 Q. And it says, "Guy and Taves'
9 hypothesis was that it was PFOA," is the
10 organic fluorine compound, right?

11 A. I see that in the summary.

12 Q. Okay. And it says, "This is
13 never satisfactorily verified by mass spec or
14 NMR."

15 Right?

16 A. I see that.

17 Q. Okay. So 3M never verified the
18 preliminary findings of Guy and Taves that it
19 was PFOA in the blood of the general
20 population and not PFOS, fair?

21 A. I guess I'm not -- excuse me.
22 I'm not sure who this is referring to that
23 this is never satisfactorily verified.

24 I can't speak to analytical
25 capability, but I would -- I would guess that

1 that played a factor in that.

2 Q. All right. Let's keep going.

3 And so the next entry, 1975,
4 probably in September. "According to Richard
5 Newmark" -- and that's the same gentleman who
6 did the NMR that confirmed -- that found
7 PFOS, right?

8 A. He found that it most closely
9 resembled the spectra in the Guy and Taves
10 paper.

11 Q. And then "Dallas Zimmerman" --
12 A 3M'er, right?

13 A. Yes.

14 Q. -- "obtained copy of the NMR
15 spectra at the meeting and spoke with CAL
16 about the possibility of 3M-produced
17 contaminant."

18 Right?

19 A. I see that.

20 Q. And CAL is Central Analytical
21 Laboratory. That's where Richard Newmark
22 worked, right?

23 A. I believe that's correct.

24 Q. Okay. 1976. "By October, 3M
25 Central Analytical Laboratory has the ability

1 to measure PFOS in blood using NMR."

2 Right?

3 A. I see that here.

4 Q. Okay. "According to Richard
5 Newmark, Central Analytical Laboratory team
6 led by Don Hagan and Jon Belisle confirmed
7 that Guy and Taves' spectra reflects the
8 presence of PFOA" -- excuse me, "of PFOS, not
9 PFOA, as the major organic fluorine
10 compound."

11 Right?

12 You're on mute.

13 A. I'm sorry. I see that in the
14 summary here.

15 Q. Okay. Let's skip that next
16 entry, and then it says, "According to
17 Richard Newmark, Newmark analyzes samples he
18 receives from Hagan that he believes are
19 blood bank samples but does not know for
20 sure."

21 Did I read that correctly, sir?

22 A. I'm sorry, I'm --

23 Q. You can always look on the
24 screen.

25 A. Yeah. Okay.

1 Q. Okay?

2 A. Yes.

3 Q. And we've already established
4 that 3M obtained blood bank samples from the
5 Red Cross around this time, right?

6 A. I believe that's correct.

7 Q. Okay. Let's keep going. Let's
8 go down to 1979.

9 "Guy and Taves author a paper
10 speculating that PFOA is the main organic
11 fluorine in human blood.

12 "According to Richard Newmark,
13 Guy and Taves send this paper to Central
14 Analytical Laboratory for review.

15 "According to Richard Newmark,
16 3M lawyers urge Central Analytical Laboratory
17 not to release the true identity, PFOS, of
18 the organic fluorine compound."

19 Did I read that correctly, sir?

20 A. You read that correctly.

21 Q. Okay. Now that we've read
22 through the document, do you remember seeing
23 that in preparation for your deposition?

24 A. I don't remember this in
25 detail.

1 Q. But does it look like a
2 document you reviewed?

3 I mean, I understand you might
4 not know it in detail, but now that we've
5 gone through it, does it -- does it refresh
6 your recollection, like, oh, yeah, that was
7 one of the ones I looked at?

8 A. I believe so.

9 Q. Yeah.

10 A. But, again, I don't recall the
11 specifics of this document.

12 Q. I believe so, too.

13 Okay. So let's look -- let's
14 go to DL564.

15 MR. ROTTENBERG: Tab 17.

16 THE WITNESS: All right. I
17 have that.

18 (Gerber 30(b)(6) Exhibit DL564
19 marked for identification.)

20 QUESTIONS BY MR. MCWILLIAMS:

21 Q. Okay. And you'll see this is
22 a -- well, first of all, do you recognize
23 this as a document you reviewed in
24 preparation for your deposition?

25 A. Yes, I do.

1 Q. Okay. And is this an internal
2 3M memo?

3 A. I believe so.

4 Q. Okay. And is the subject
5 fluorochemicals in blood?

6 A. Yes, that's correct.

7 Q. And it's dated October 18,
8 1977; is that right?

9 A. Yes.

10 Q. And TSCA 8(e) regulation was in
11 effect at this point in time, right?

12 A. That's correct.

13 Q. Okay. And this is marked
14 "confidential"; is that right?

15 A. Yes, it is.

16 Q. And it says, "We have been
17 asked to report to the corporate
18 responsibility committee on our progress in
19 the fluorochemicals in blood studies, the
20 associated medical examination and our
21 possible obligation to report to the EPA
22 under TSCA."

23 Right?

24 A. Yes, I see that.

25 Q. Okay. And who is the corporate

1 responsibility committee?

2 A. The corporate responsibility
3 committee, my understanding at the time,
4 would have had responsibility for evaluating
5 information for potential reporting under
6 TSCA 8(e), among other responsibilities.

7 Q. But were they -- I mean, how
8 would you characterize -- were they -- were
9 they executives within the company?

10 A. So -- and I guess I'm not
11 familiar with the details of the makeup of
12 that committee at the time. It's not a --
13 3M's organization has changed substantially
14 over the years.

15 Q. Right.

16 But let's look at the name. We
17 can see Scheuerman again.

18 That's the in-house counsel at
19 3M, right? Lawyer?

20 A. I believe so.

21 Q. Okay. And J.D. LaZerte? He
22 was a high-ranking executive at 3M, right?

23 A. I don't know his specific
24 position.

25 Q. Okay. We'll get there.

1 But so let me ask you this:
2 Based on your review of the documents in this
3 case, was the corporate responsibility
4 committee made aware that 3M was of the
5 opinion that the organic fluorine found in
6 the blood of the general population was PFOS?

7 A. My understanding based on the
8 documents that I've reviewed is that, you
9 know, this information, the investigations of
10 fluorochemicals in blood, was sent to the
11 corporate responsibility committee for
12 evaluation for TSCA 8(e).

13 Q. Okay. I asked a slightly
14 different question.

15 Based on your review of the
16 documents in this case, was the corporate
17 responsibility -- strike that. Let me try
18 that again.

19 Based on your review of the
20 documents in this case, was the corporate
21 responsibility committee made aware that
22 scientists within 3M were of the opinion that
23 the organic fluorine found in the blood of
24 the general population was PFOS?

25 A. My expectation is that all of

1 the relevant information that 3M had would
2 have been evaluated by the corporate
3 responsibility committee for TSCA 8(e)
4 purposes.

5 Q. Including Dr. Newmark's
6 assessment that the organic fluorine in the
7 blood of the general population was PFOS,
8 fair?

9 A. That he had identified the
10 spectra as best resembling that, yes, I
11 believe that's correct.

12 Q. Okay. Well, let's just confirm
13 this. Let's pull up DL350.

14 MR. ROTTENBERG: Tab 107. 107.

15 THE WITNESS: I have that.

16 (Gerber 30(b)(6) Exhibit DL350
17 marked for identification.)

18 QUESTIONS BY MR. MCWILLIAMS:

19 Q. Okay. Do you recognize this as
20 a document you reviewed in preparation for
21 your deposition today?

22 A. I do.

23 Q. Okay. And you see that this is
24 a cover letter dated October 19, 1977?

25 A. Yes.

1 Q. Again, this is an internal 3M
2 document; is that correct?

3 A. I believe so.

4 Q. And it's again marked
5 "confidential"?

6 A. Yes.

7 Q. And it's -- and it's to 3M's
8 lawyer, Scheuerman; is that right?

9 And it looks like he's the one
10 who saved this copy for us, again, helping
11 out.

12 Do you see that's his stamp?

13 A. Yes, I guess that's what I
14 would understand that to be.

15 Q. Okay. And then it's written,
16 "In order to help you with your preparations
17 for the presentation on November 7th to the
18 corporate responsibility committee, I am
19 enclosing copies of the transparencies used
20 in the last report."

21 Did I read that correctly, sir?

22 A. Yes.

23 Q. And then if you flip to the
24 next page, you'll see there's a timeline
25 attached to this material -- to this letter

1 that is meant to assist these gentlemen in
2 the report to the corporate responsibility
3 committee, correct?

4 A. Yes.

5 Q. And let's just go through this
6 together. So it's -- again, it's the Organic
7 Fluorine Compounds in Blood Chronology,
8 right? That's the title?

9 A. Yes.

10 Q. And the first entry is
11 August 22, 1975. That's the initial phone
12 call from Dr. Guy calling Mr. LaZerte at 3M,
13 right?

14 A. That's my understanding based
15 on the documents I've reviewed.

16 Q. Okay. Three days later,
17 Dr. Guy and Dr. Taves present their findings
18 at that meeting in Chicago, right? The ACS
19 meeting where 3M attended?

20 A. That's my understanding.

21 Q. Okay. And in that meeting they
22 presented their findings, which included
23 their spectra, this unknown chemical they
24 found in everyone's blood, right?

25 A. I believe that's correct.

1 Although they didn't -- they presented their
2 spectra, they had identified organic
3 fluorine. And in their paper, at least, they
4 had postulated the potential structures of
5 that compound.

6 Q. Right.

7 And that's when they then
8 reached out to 3M, because they knew 3M was
9 in the business of making these types of
10 chemicals. And they sought 3M's assistance
11 in identifying the precise chemical; is that
12 fair?

13 A. Yes, that's consistent with my
14 understanding.

15 Q. Okay. And then -- so you go
16 down, you see "October '75, Central
17 Research" -- that's CAL, right? --
18 "Analytical agrees to determine the quantity
19 and character of organic fluorine compounds
20 in human blood."

21 Did I read that correctly?

22 You might have been muted. I
23 didn't hear your answer.

24 A. I'm sorry. Yes.

25 Q. Okay. And by character,

1 that's -- also referred to as
2 characterization, that's -- so it identified
3 the specific chemical at issue, right?

4 A. That would be my general
5 understanding of the aim of those types of
6 investigations.

7 Q. Okay. And then on November 6,
8 1975 -- that's the same date that Richard
9 Newmark issued his report, right?

10 A. I believe so.

11 Q. November 6, 1975, Central
12 Research reports that PFOS spectra matches
13 that presented by Guy, et al., right?

14 A. That's what's captured in the
15 summary here. The memo talked about it most
16 closely resembling PFOS of the ten substances
17 he had compared.

18 Q. Okay. But the verbiage used to
19 communicate this information to the corporate
20 responsibility committee was matched, right?
21 It matches with PFOS, right?

22 A. My understanding and, you know,
23 my experience with the TSCA 8(e) committee,
24 this would be summary-type information that
25 would inform a fuller discussion of the

1 facts.

2 Q. Sir, what word was used to
3 describe Dr. Newmark's finding? Was it "most
4 closely resembled," or do they use the word
5 "match" on the screen?

6 If you could please underline
7 the word "matches."

8 What word do they use, sir?

9 A. I see that the word that they
10 use in this summary is "matches."

11 Q. Okay. Let's keep going.

12 If you go to the next page,
13 November -- February 17, 1976, the top one.
14 It says, "Central Research Analytical
15 develops an accurate analytical method for
16 determining part per billion quantities of
17 organic fluorine compounds in human blood.
18 The method tested on blood from American Red
19 Cross and value agrees with those in the
20 literature."

21 Did I read that correctly, sir?

22 A. Yes.

23 Q. Okay. And that indicates to
24 you that 3M had -- separate and apart from
25 the analysis that Guy and Taves did on blood

1 bank blood, 3M acquired its own blood bank
2 blood from the Red Cross, right, and did
3 laboratory analysis? Is that fair?

4 A. That's my understanding based
5 on this summary.

6 Q. Okay. Well, let's go down to
7 September 9, '76.

8 It's "mice fed Scotchban."

9 Do you see that, sir?

10 A. Yes.

11 Q. And Scotchban is FC-807.
12 That's the food packaging material, right?

13 A. I believe that's correct.

14 Q. It was used in things like
15 fast-food food wrappers, dog food bags,
16 right?

17 A. I believe that's correct.

18 Q. Okay. And so they took that
19 substance that was in the -- touching
20 people's food all around the world, and they
21 fed it to mice, right?

22 A. That's what I understand based
23 on this summary.

24 Q. Again, go to the next entry.
25 September 17, 1976, they then analyzed the

1 blood in those mice that were fed Scotchban,
2 and what they did find?

3 You're on mute again.

4 A. I'm sorry, I keep doing that.

5 It says, "C8F17SO3H identified
6 as organic fluorine compound in mice fed
7 Scotchban."

8 Q. Is that PFOS?

9 A. It is.

10 Q. Okay. So all this information
11 was made available to the corporate
12 responsibility committee in 1977, right? The
13 same individuals responsible for determining
14 whether or not to report this information to
15 the environmental -- to the United States
16 Environmental Protection Agency, right?

17 A. That's my understanding, yes.

18 Q. And the decision was made not
19 to report it, right?

20 A. Based on the documents I've
21 reviewed, I believe that's correct.

22 (Gerber 30(b)(6) Exhibit DL8
23 marked for identification.)

24 QUESTIONS BY MR. MCWILLIAMS:

25 Q. Okay. Let's pull up one more,

1 DL8.

2 MR. ROTTENBERG: Tab 77.

3 THE WITNESS: All right. I

4 have that.

5 QUESTIONS BY MR. MCWILLIAMS:

6 Q. And do you recognize this as a
7 document you reviewed in preparation for your
8 deposition?

9 A. Yes, I believe so.

10 Q. Okay. And this is a similar
11 timeline but different from the document we
12 looked at previously?

13 A. Yes, it's also a chronology
14 document.

15 Q. Okay. And I guess let's just
16 look at the very first entry, August 22nd.
17 This is a little bit more detail than the
18 last one, but, again, it's talking about how
19 these outside researchers contacted 3M about
20 this mystery chemical they found in
21 everyone's blood, and they wanted to know if
22 it was from 3M, right? Specifically whether
23 or not it was from Scotchgard, right?

24 A. And I'm sorry, can you rephrase
25 the question?

1 Q. Right. I'm just trying to
2 orient the jury that's going to hopefully
3 watch this video one day that the initial
4 entry on here is August 22, 1975, and that's
5 when 3M was first contacted by these outside
6 researchers that found this mystery chemical
7 in everyone's blood, and they wanted 3M's
8 help figuring out exactly what it was; in
9 particular whether or not it was from
10 Scotchban -- Scotchgard, excuse me. Right?

11 A. That's what's reflected in this
12 summary.

13 Q. Okay. And let's skip down to
14 November 6, 1975. Let's see what verbiage is
15 used to describe Dr. Newmark's findings in
16 this separate chronology document.

17 It says, "Of the ten samples
18 submitted on September 21, 1975, Central
19 Research reports that the F/NMR analysis
20 shows that the spectrum of PFOS or its salts
21 matches that presented by Guy and Taves."

22 Right?

23 A. I see that in the summary.

24 (Gerber 30(b)(6) Exhibit DL1425
25 marked for identification.)

1 QUESTIONS BY MR. MCWILLIAMS:

2 Q. Okay. Let's go to DL1425,
3 please.

4 MR. ROTTENBERG: Tab 9.

5 THE WITNESS: All right. I
6 have that.

7 QUESTIONS BY MR. MCWILLIAMS:

8 Q. Do you recognize this document
9 as a document you reviewed in preparation for
10 your deposition?

11 A. I believe so.

12 Q. Okay. And you see up on the
13 top right-hand corner it's marked "Attorney
14 work product, privileged and confidential,
15 draft, January 5, 2003"?

16 A. Yes.

17 Q. Okay. And this is a document
18 titled "Decatur Worker Communication Timeline
19 Concerning Fluorochemicals Health and Safety
20 Issues."

21 Right?

22 A. Yes, I see that.

23 Q. And if we go down to the
24 bottommost entry, late '75, early '76.

25 And again, you see -- so

1 there's three cells. There's the time, the
2 date, there's a description of the event, and
3 then on the far right is the documentary
4 basis for that summary of the events; is that
5 fair?

6 A. Yes, I think so.

7 Q. Okay. And let's look at how
8 Dr. Newmark's finding was characterized by
9 3M's lawyers in 2003. Okay?

10 They said, "3M Central Research
11 Analytical Laboratory investigates organic
12 fluorine compounds, identifies PFOS in blood,
13 with qualitative analysis, and develops new
14 analytical method."

15 Did I read that correctly, sir?

16 A. Yes.

17 Q. Do you have any reason to
18 dispute that characterization that between
19 19 -- late '75 and early '76 scientists
20 within 3M Central Research Analytical
21 Laboratory identified PFOS as the organic
22 fluorine compound in the blood of the general
23 population?

24 A. Yeah, analytical chemistry is
25 beyond my area of expertise, so I -- I would

1 not have a reason to dispute that.

2 Q. Well, separate and apart from
3 your lack of expertise in chemistry,
4 notwithstanding the fact you have a chemical
5 engineering degree, in your preparation for
6 today's deposition -- and this is my
7 opportunity to discuss with 3M, the company,
8 what it knew and when on this topic -- have
9 you seen anything that would dispute this
10 characterization?

11 A. I've not seen anything to
12 dispute the characterization of a qualitative
13 analysis, and then it discusses the ongoing
14 developments in analytical capability.

15 (Gerber 30(b)(6) Exhibit DL13
16 marked for identification.)

17 QUESTIONS BY MR. MCWILLIAMS:

18 Q. Okay. Let's go to DL13,
19 please.

20 MR. ROTTENBERG: Tab 8.

21 THE WITNESS: I have that.

22 QUESTIONS BY MR. MCWILLIAMS:

23 Q. Okay. And if you would -- I
24 don't have this page marked. If you go --
25 there's a -- it's probably 15, 20 pages in,

1 Joe. It's titled "Chronology of Events
2 Leading to the Initiation of 90-Day Studies."

3 Actually, I'm sorry, before I
4 even jump there, do you recognize this
5 document as a document you reviewed in
6 preparation for today?

7 A. Yes, I believe so.

8 Q. Okay. Okay. So if we could go
9 to that page, please. Or if any of my team's
10 watching can help me find that page.

11 Okay. It's Bates number ending
12 in 700. Yeah, you found it. Great.

13 Are you there, sir?

14 A. I am.

15 Q. Okay. And you see this is
16 titled "Chronology of Events Leading to the
17 Initiation of 90-Day Studies."

18 Right?

19 A. Yes, I see that.

20 Q. And the 90-day studies is a
21 reference to the subchronic toxicology tests
22 that 3M performed with PFOS and others on
23 laboratory animals, correct?

24 A. I believe that's correct.

25 Q. Okay. And so what's the first

1 event that's identified as what initiated
2 these studies?

3 A. So the first event in the
4 chronology, "1971, D.R. Taves reports organic
5 and inorganic forms of fluorine in human
6 serum."

7 Q. Okay. And what's the second
8 entry, sir?

9 A. "1975, Taves presents F19 NMR
10 spectra data to 3M. CRL identifies F19 NMR
11 spectrum as C8F17SO3H or its salts."

12 Q. Okay. And that's a reference
13 to Dr. Newmark -- Dr. Newmark's finding that
14 the organic fluorine in the blood of the
15 general population presented by Dr. Guys and
16 Taves was PFOS, correct?

17 A. I would understand that to be a
18 reference to Dr. Newmark's memo, that that
19 closely resembles PFOS, based on his
20 analysis.

21 Q. Okay. But they don't use "most
22 closely resembles" here. They use
23 "identifies," right?

24 A. That's the word that they've
25 chosen for this summary.

1 Q. Okay. And is this consistent
2 with your understanding that it was this
3 finding by Dr. Newmark that a 3M product was
4 in the blood of the general population, was
5 the initiating event for these subchronic
6 toxicology tests?

7 A. There are a number of events in
8 this chronology, and I would -- I would -- I
9 would understand that to mean that those were
10 all factors in that consideration.

11 Q. Okay. But one of the factors
12 was finding a chemical made by 3M in the
13 blood of the general population, fair?

14 A. So -- and again, I want to be
15 precise about -- about the finding, that it
16 most closely resembled PFOS from those
17 general -- from those pooled samples from the
18 general population.

19 (Gerber 30(b)(6) Exhibit DL1356
20 marked for identification.)

21 QUESTIONS BY MR. MCWILLIAMS:

22 Q. Right. Okay. Let's go one
23 more. Let's go to DL1356, please.

24 MR. ROTTENBERG: Tab 64.

25 Sorry, I might have been muted.

1 QUESTIONS BY MR. MCWILLIAMS:

2 Q. Do you have the document in
3 front of you, sir?

4 A. I do.

5 Q. Okay. And do you recognize
6 this as a meeting minutes of a meeting held
7 on May 25, 1979?

8 A. Yes, I do.

9 Q. Okay. And do you see that --
10 let's just jump right into it.

11 It says, "This meeting was
12 called by R.A. Prokop to discuss regulatory
13 and scientific issues involved in decisions
14 related to FC-807 studies."

15 Right?

16 A. Yes, I see that.

17 Q. And again, FC-807 is Scotchban.
18 That's the product that was used for food
19 packaging materials, in contact with people's
20 food, right?

21 A. My understanding is that FC-807
22 refers to Scotchban.

23 Q. Okay. Let's read the next
24 sentence.

25 It says, "Prokop cited Taves'

1 results, as well as the results of 3M Central
2 Laboratory labs, indicating the presence of
3 PFOS in pooled plasma samples from the
4 general public."

5 Did I read that correctly, sir?

6 A. Yes. It goes on --

7 Q. Go ahead, I'm sorry.

8 A. Sorry.

9 And --

10 Q. I know it goes on --

11 A. Yes, it goes on to -- yeah, to
12 discuss the uncertainty in those findings.

13 Q. Okay. Well let's talk about
14 this first sentence, and then we'll talk
15 about the uncertainty.

16 Okay?

17 Now, does this indicate to you,
18 sir, that separate and apart from Guy and
19 Taves conducting analysis on pooled blood and
20 characterizing it, 3M also acquired pooled
21 blood from blood banks, and it characterized
22 it -- characterized the organic fluorine and
23 identified it as PFOS?

24 A. So the way it's summarized
25 here, it is Taves' results as well as the

1 results of 3M Research Labs, indicating the
2 presence of C8F17SO3 minus in pooled plasma
3 samples from the general public.

4 Q. So that's two different sets of
5 results, right?

6 A. That would be my understanding
7 of that.

8 Q. Okay. And again, the word used
9 to describe it, the finding, was "indicating
10 the presence," right?

11 A. Yes, that's the words -- those
12 are the words they used.

13 Q. Okay. And in fairness, I
14 know -- just to deprive Craig of this moment,
15 the next sentence says, "There is uncertainty
16 as to whether the PFOS is present in all the
17 samples pooled or whether it is a result of
18 one or few persons involved having been
19 exposed to fluorochemicals."

20 Right?

21 A. Yes.

22 Q. Okay. And like everything in
23 science, there's always some uncertainty.

24 But are you aware -- have you
25 seen any documents where 3M was able to

1 refute this finding of PFOS present in the
2 blood of everyone in the general population?

3 A. Based on my review of the
4 documents, I haven't seen anything able to
5 refute that. I believe that that depends
6 heavily on the analytical capability at the
7 time. But someone in the analytical
8 chemistry would be better able to speak to
9 that.

10 (Gerber 30(b)(6) Exhibit DL1571
11 marked for identification.)

12 QUESTIONS BY MR. MCWILLIAMS:

13 Q. Okay. If we could go to
14 DL1571. This is just a demonstrative I made,
15 and I was hoping you could just go through
16 it -- we can just go through it slide by
17 slide, and you just tell me if you agree with
18 the way I described the documents.

19 Okay?

20 So the first one you're
21 familiar with. That's Dr. Newmark, right?

22 A. Yes.

23 Q. If we go to the next page,
24 please, I pulled a quote. "Of the compounds
25 submitted, PFOS resembled most closely the

1 fluorine NMR spectrum by W.S. Guy."

2 Is that a fair characterization
3 of Exhibit DL9?

4 A. Yes, I think that's an accurate
5 summary.

6 Q. Okay. Let's go to the next
7 page, please. This is DL8.

8 And you see this document, sir?
9 We looked at this a few minutes ago; is that
10 right?

11 A. Yes.

12 Q. Okay. Let's go to the next
13 page.

14 And do you see up -- and
15 the quote I pulled, sir, is, "Of the ten
16 samples submitted on September 21, 1975, CRL,
17 Central Research Laboratory, reports that the
18 F/NMR analysis shows that the spectrum of
19 PFOS matches that presented by Guy and
20 Taves."

21 Right?

22 A. Yes, I see that.

23 Q. Is that a fair characterization
24 of that document?

25 A. I do recall that's the language

1 the document used.

2 Q. Okay. Let's go to the next
3 one, please.

4 This is DL1425. We just looked
5 at that.

6 Do you remember that, sir?

7 A. Yes.

8 Q. Okay. Let's go to the next
9 page.

10 You see the quote I made?
11 Quote, "3M CRL investigates organic fluorine
12 compounds, identifies PFOS in blood with
13 qualitative analysis, NMR spectra."

14 Is that a fair characterization
15 of DL1425, sir?

16 A. I believe that's an accurate
17 excerpt from that document.

18 Q. Let's go to the next page,
19 please.

20 Do you recognize this? This is
21 the timeline we looked at a few minutes ago?

22 A. Yes.

23 Q. Okay. Go to the next page.

24 Quote, "CAL team led by Don
25 Hagan and Jon Belisle, Richard Newmark, NMR,

1 confirm that Guy and Taves' spectra reflects
2 the presence of PFOS, not PFOA, as the major
3 organic fluorine compound."

4 Is that a fair characterization
5 of that document?

6 A. I do recall that -- that
7 statement from that document.

8 Q. Great. Let's go to the next
9 one, please.

10 And this is DL13. We just
11 looked at that a few minutes ago, right?

12 A. Yes.

13 Q. Okay. And let's go to the next
14 page, please.

15 Quote, "Taves presents F/NMR
16 spectra data to 3M. CRL identifies F/NMR
17 spectrum as PFOS."

18 Is that a fair characterization
19 of DL13, sir?

20 A. I believe that's an accurate
21 excerpt from that document.

22 Q. Okay. Let's go to the next
23 page, please.

24 This is DL1389. Go -- you
25 recognize that, sir? We looked at that

1 towards the beginning of this module.

2 A. Yes.

3 Q. Okay. Let's go to the next
4 page. DL1389.

5 The quote I pulled is, quote,
6 "One report does suggest the presence of PFOS
7 in humans, and it is our purpose to
8 substantiate or refute this observation."

9 Is that a fair characterization
10 of DL1389, sir?

11 A. I believe that's an accurate
12 excerpt from that document.

13 Q. Okay. One more, and then we'll
14 be done and we'll take a lunch break.

15 Okay?

16 Do you recognize this, sir?
17 This is the last one we looked at, I believe.
18 This is DL1356.

19 A. Yes.

20 Q. Okay. And let's pull -- go to
21 the next page. Okay. And DL1356, the quote
22 I pulled is, quote, "Prokop cited Taves'
23 results, as well as the results the 3M's CRL,
24 indicating the presence of PFOS in pooled
25 plasma samples from the general public."

1 Did I read that correctly, sir?

2 Or, excuse me, is that a fair
3 characterization of DL1356?

4 A. I believe that's an accurate
5 excerpt from that document.

6 MR. MCWILLIAMS: Okay. All
7 right. I'm at a good stopping point.
8 Is this a good time for lunch for you
9 guys?

10 Well, let's go off the record
11 and then we'll talk about it.

12 VIDEOGRAPHER: The time is
13 12:45 p.m. We're off the record.

14 (Off the record at 12:45 p.m.)

15 VIDEOGRAPHER: The time is
16 1:33 p.m. We are back on the record.

17 QUESTIONS BY MR. MCWILLIAMS:

18 Q. Mr. Gerber, back -- welcome
19 back from lunch.

20 Are you ready to proceed?

21 A. Yes, I am.

22 Q. Okay. So let me see. We're
23 talking about TSCA, TSCA today, and one of
24 the components of TSCA is whether or not the
25 chemical at issue is widespread in the

1 environment, right -- we talked about that --
2 in the general population's blood; is that
3 fair?

4 A. That's one consideration under
5 TSCA 8(e).

6 Q. Okay. Another consideration of
7 TSCA is bioaccumulation, right?

8 A. Yes, that is another
9 consideration under TSCA 8(e).

10 Q. Let's unpack that a little bit.
11 Bioaccumulation just means that
12 a chemical can build up in your body over
13 time. Basically it doesn't leave your body
14 fast enough, that more is coming in than
15 going out.

16 Is that a fair, eighth grade
17 description of bioaccumulation?

18 A. That is my general
19 understanding of that term.

20 Q. Okay. And again, one of the
21 ways of measuring bioaccumulation is
22 measuring the half-life of a compound in an
23 individual or organism, right?

24 A. I believe that's correct. And
25 EPA has established other criteria for that

1 end point as well.

2 Q. Okay. So let's talk about
3 bioaccumu -- let's talk about PFOS and
4 bioaccumulation and what 3M knew and when
5 they knew it.

6 Okay?

7 A. Okay.

8 Q. You with me?

9 A. Yes.

10 Q. And that's one of the topics
11 you researched in preparation for today's
12 deposition, right?

13 A. As it relates to 3M's TSCA 8(e)
14 obligations.

15 Q. Right. Okay.

16 So let's pull up, for example,
17 DL1391, please.

18 MR. ROTTENBERG: Tab 55.

19 THE WITNESS: All right. I
20 have that.

21 (Gerber 30(b)(6) Exhibit DL1391
22 marked for identification.)

23 QUESTIONS BY MR. MCWILLIAMS:

24 Q. Okay. And do you recognize
25 this as one of the documents you reviewed in

1 preparation for your deposition?

2 A. Yes.

3 Q. Okay. And these are internal
4 3M meeting minutes dated September 19, 1977;
5 is that correct?

6 A. That is correct.

7 Q. And the first paragraph reads,
8 "The above persons met on September 2, 1977,
9 to discuss results showing that certain 3M
10 employees who work directly with
11 fluorocarbons have a higher-than-normal level
12 of organically bound fluorine in their blood.
13 These high levels appear to be the result of
14 exposure to industrial fluorochemicals
15 produced by 3M."

16 Did I read that correctly?

17 A. Yes.

18 Q. Okay. If you go to the next
19 page, please. The very top.

20 It's written, "The persistence
21 of organically bound fluorine in human blood
22 was discussed. There is some evidence that
23 the organically bound fluorine caused by
24 exposure to industrial fluorochemicals
25 persists in the blood over a considerable

1 period."

2 Did I read that correctly, sir?

3 A. Yes.

4 Q. And what that's making
5 reference to is how long it takes for
6 fluorochemicals such as PFOS to leave the
7 human body, correct?

8 A. I -- I believe that that --
9 that's what they're referring to.

10 Q. And what they're talking about
11 specifically is that they can persist in the
12 blood over a considerable period, correct?

13 A. That's what they've stated
14 there.

15 Q. And compounds that can persist
16 in the blood or in the body for a
17 considerable period of time are known to be
18 bioaccumulative compounds, correct?

19 A. So, you know, I guess the
20 answer to that is not satisfying, but it
21 depends. And it depends on the definitions
22 of those terms. What is a considerable
23 period. What is the threshold for
24 bioaccumulation.

25 Q. Okay. But the words that

1 are -- as they appear on this meeting minutes
2 from 1977 indicates that 3M was in possession
3 of information indicating that
4 fluorochemicals manufactured by 3M, which
5 would include PFOS, potentially
6 bioaccumulate, correct?

7 A. It talks about the persistence
8 in blood over a considerable period.

9 Q. Okay.

10 A. And then --

11 Q. I can use that. Thank you.
12 Let's go to the next one, which
13 is DL1398.

14 MR. ROTTENBERG: Tab 32.

15 THE WITNESS: All right. I
16 have that.

17 (Gerber 30(b)(6) Exhibit DL1398
18 marked for identification.)

19 QUESTIONS BY MR. MCWILLIAMS:

20 Q. Okay. Do you recognize this
21 document as a document you reviewed in
22 preparation for your deposition?

23 A. Yes, I do.

24 Q. Okay. And is this an internal
25 3M document dated October 20, 1978?

1 A. October 20, 1978.

2 Q. Okay. And the subject is
3 fluorochemicals technical review committee --
4 or I guess that's who it's to. These are the
5 members of the fluorochemical technical
6 review committee; is that correct?

7 A. That is my understanding.

8 Q. Okay. Okay. Let's look at
9 this together.

10 This is -- the first paragraph
11 says, "Over the past several months, several
12 discussions, memos and meeting presentations
13 have dealt with the general topic of
14 metabolic studies with fluorochemicals. The
15 purpose of this memo is to outline our
16 specific proposals which have evolved from
17 these previous discussions. These proposals
18 were outlined in a more general way in my
19 slides presented to the committee at its
20 August 31, 1978 meeting."

21 Did I read that correctly? I
22 don't know if you --

23 A. Yes, I'm sorry.

24 Q. Okay. The next paragraph
25 continues. It says, "Some of the broad

1 aspects of the metabolic properties of some
2 of 3M fluorochemicals in animals and man,
3 i.e., their absorption, distribution to
4 tissues, chemical biotransformation and
5 elimination, have been roughly defined by
6 previous work. For example, it is clear
7 that, 1, these chemicals are present in human
8 plasma and probably urine; 2, at least some
9 of them are slowly eliminated from human
10 plasma, perhaps very slowly."

11 Did I read that correctly to --
12 did I read that correctly?

13 A. Yes.

14 Q. Okay. So this October 1978
15 memo indicates that at least these members of
16 the fluorochemical technical review committee
17 were aware of information that would allow
18 them to state that it is clear that some of
19 these chemicals are slowly eliminated from
20 human plasma, right?

21 A. Yes, I think that that is what
22 is reflected in that section.

23 Q. And the more slowly chemicals
24 are eliminated from the blood, the more
25 likely they are to bioaccumulate, fair?

1 A. Based on my understanding, yes,
2 that's one factor of bioaccumulation, you
3 know, and uptake would be the other
4 primary --

5 (Gerber 30(b)(6) Exhibit DL1408
6 marked for identification.)

7 QUESTIONS BY MR. MCWILLIAMS:

8 Q. Okay. Let's go to 1979 now.
9 Let's go to DL1408.

10 MR. ROTTENBERG: Tab 39.

11 THE WITNESS: All right. I
12 have that.

13 QUESTIONS BY MR. MCWILLIAMS:

14 Q. Okay. And do you recognize
15 this document as a document you reviewed in
16 preparation for your deposition?

17 A. Yes.

18 Q. Okay. And is this an internal
19 3M memo dated May 4, 1979?

20 A. Yes, it is.

21 Q. Okay. And do you see the
22 subject line is "Recommendations of H.C.
23 Hodge and J.R. Mitchell"?

24 A. Yes.

25 Q. Do you recognize those names as

1 outside consultants that 3M consulted with on
2 the fluorochemicals in blood issue?

3 A. I believe that's correct.

4 Q. Okay. Let's see here. So it
5 reads, "In response to your memo of April 30,
6 1979, regarding recommendations by Drs. Hodge
7 and Mitchell on the fluorochemical program, I
8 have the following comments."

9 Okay? See where I'm reading
10 from?

11 A. Yes, I do.

12 Q. Okay. And there's some
13 comments listed for Dr. Hodge, and then
14 there's -- you go on the next page at the
15 bottom, it's from Dr. Mitchell. And I want
16 to look at the very last paragraph in the
17 section for Dr. Hodge where it says,
18 "Although we agree the animal studies are
19 expensive." Let's go to this last sentence
20 in that paragraph from this meeting minutes
21 of 1979.

22 "Certainly, we as a company
23 should have some chronic toxicity data on at
24 least one and preferably several of the
25 fluorochemicals for which we have evidence of

1 persistence in humans."

2 Did I read that correctly, sir?

3 A. Yes.

4 Q. So at least the members who
5 attended this meeting were of the belief that
6 3M was in possession of evidence that
7 fluorochemicals 3M manufactured persist in
8 humans, fair?

9 A. I see that reflected in the
10 summary, that there's evidence of persistence
11 in humans.

12 Q. Okay. And persistence in
13 humans is another reference to biological
14 half-life, correct?

15 If they persist in humans,
16 they're not leaving, right?

17 A. I believe that that's one
18 measure of persistence.

19 Q. Okay.

20 A. Yeah.

21 Q. Okay. So that's 1977, 1978,
22 1979. We've seen multiple references now to
23 3M being in possession of some information
24 indicating to them that fluorochemicals they
25 made, including PFOS, have long half-lives

1 and, therefore, potential to bioaccumulate,
2 fair?

3 A. They appear, based on the
4 documents that I've reviewed, to have
5 identified slow elimination and the potential
6 persistence of those substances.

7 (Gerber 30(b)(6) Exhibit DL1416
8 marked for identification.)

9 QUESTIONS BY MR. MCWILLIAMS:

10 Q. Okay. Let's go to one more,
11 1980. This is DL1416.

12 MR. ROTTENBERG: Tab 80.

13 THE WITNESS: All right. I
14 have that.

15 QUESTIONS BY MR. MCWILLIAMS:

16 Q. Do you recognize this document
17 as a document you reviewed in preparation for
18 your deposition?

19 A. Yes, I believe so.

20 Q. Okay. And is this an internal
21 3M memo dated June 25, 1980?

22 A. Yes.

23 Q. And is the subject
24 "Fluorochemical testing, 1980 to 1981"?

25 A. Yes, it is.

1 Q. Okay. If you flip through
2 this, please, you'll see the first page it
3 talks about toxicology services recommended
4 the following animal studies be considered
5 for testing under the fluorochemical program,
6 right?

7 And the first one is a -- is
8 three 21-day repeat dermal toxicity tests on
9 Scotchgard carpet, fabric treatment and Light
10 Water AFFF and FC-95, right?

11 A. Yes, I see that.

12 Q. And those are all POSF-based
13 products that have the ability to transform
14 to PFOS either in the environment or in
15 people's bodies, right?

16 A. My understanding is those
17 products are POSF-based chemistry, and POSF
18 was recognized to have the ability to
19 hydrolyze to PFOS.

20 Q. Okay. Now let's go to page 4,
21 please.

22 Down at the bottom, number 4,
23 it says, "The two-year lifetime oral study -
24 rats."

25 This is important. "It has

1 been determined and well-documented that
2 certain fluorochemicals are stable compounds
3 with very long biological half-lives and
4 uncertain biological effects."

5 Did I read that correctly?

6 A. Yes.

7 Q. Okay. So as of 1980, 3M was of
8 the belief that it was well-documented that
9 certain fluorochemicals they made had very
10 long biological half-lives, right?

11 A. That's what this section
12 appears to summarize and represent.

13 Q. And you've already testified
14 that the longer the half-life, the more
15 likely it is to bioaccumulate, correct?

16 A. And again, I would defer to my
17 toxicology colleagues for a full explanation
18 of that, but I -- I have a general
19 understanding.

20 Q. And is your general
21 understanding consistent with how I framed it
22 to you, sir?

23 A. That a longer half-life --
24 again, based on my general understanding, a
25 longer half-life would be an indication of a

1 potential to bioaccumulate.

2 (Gerber 30(b)(6) Exhibit DL1570

3 marked for identification.)

4 QUESTIONS BY MR. MCWILLIAMS:

5 Q. Right.

6 Okay. So let's look -- let me

7 do a little summary slide here again.

8 Let's -- DL1570, I believe, are trial

9 demonstratives.

10 And again, if you would go
11 through each of these, sir, and tell me if
12 you agree with the way I characterize the
13 quote from those documents.

14 So DL1391, that's the first
15 document we looked at from 1977. The quote,
16 "There is some evidence that the organically
17 bound fluorine caused by exposure to
18 industrial fluorochemicals persists in the
19 blood over a considerable period."

20 Do you remember that document,
21 sir, in DL1391?

22 A. Yes.

23 Q. Is that a fair
24 characterization?

25 A. I believe that's an accurate

1 excerpt.

2 Q. Okay. Next one is DL1398.

3 Quote -- and this is from the document from
4 1978. Quote, "It is clear that" -- excuse
5 me. "It is clear that at least some of them
6 are slowly eliminated from human plasma,
7 perhaps very slowly."

8 Did I read that correctly?

9 A. Yes.

10 Q. And is that a fair
11 characterization of DL1398?

12 A. I believe that's an accurate
13 representation of that document.

14 Q. Okay. The next one from 1979,
15 DL1408. Quote, "Certainly, we as a company
16 should have some chronic toxicity data on at
17 least one, and preferably several, of the
18 fluorochemicals for which we have evidence of
19 persistence in humans."

20 Did I read that correctly, sir?

21 You're on mute again.

22 A. I'm sorry. Yes.

23 Q. And is that a fair
24 characterization of DL1408?

25 A. I believe that is an accurate

1 excerpt.

2 Q. Okay. The next one from 1980,
3 DL1416. Quote, "It has been determined and
4 well-documented that certain fluorochemicals
5 are stable compounds with very long
6 biological half-lives and uncertain
7 biological effects."

8 Did I read that correctly?

9 A. Yes.

10 Q. And is that a fair
11 characterization of DL1416, sir?

12 A. I believe that's an accurate
13 excerpt.

14 Q. Great.

15 Okay. So to recap a little
16 bit, 3M is getting reports that a chemical
17 they make is being found in the blood of the
18 general population, right?

19 A. From pooled samples.

20 Q. Whatever the source, they're
21 getting reports, right?

22 A. They received the information
23 from Guy and Taves, and then we discussed
24 additional pooled blood samples that 3M
25 apparently analyzed.

1 Q. Right.

2 Okay. And we've now
3 established that 3M, as early as 1977, was in
4 possession of information indicating the
5 bioaccumulative potential of
6 fluorochemicals -- of fluorochemicals,
7 including PFOS, fair?

8 A. So the slow elimination and the
9 persistence of those compounds were noted.

10 Q. Thank you.

11 All right. So now let's move
12 into DL13. And we talked about this briefly
13 before, but I just want to make sure I heard
14 your testimony correctly.

15 You understand that this
16 document clearly indicates that one of the
17 initiating factors, one of the events that
18 caused 3M to go out and perform certain
19 toxicological tests on PFOS and other
20 fluorochemicals, was the observation of PFOS
21 in the blood of the general population,
22 right?

23 A. I'm sorry, which tab was this?

24 MR. ROTTENBERG: 8.

25

1 QUESTIONS BY MR. MCWILLIAMS:

2 Q. 8.

3 A. Okay. Just a moment, please.

4 So -- and I'm sorry, could you
5 repeat your question?

6 Q. Yeah.

7 If you turn to the Bates number
8 ending in 700.

9 A. Yes, the chronology of events?

10 Q. Yes, sir.

11 A. I have that.

12 Q. Okay. You going to go there,
13 Joe?

14 Thank you.

15 If you look at the second
16 event, sir, you see that the observation of
17 PFOS in the blood of the general population
18 is identified as one of the events that
19 initiated 3M conducting those 90-day
20 toxicology studies on rats and mice and
21 monkeys, correct?

22 A. Yes, I see that that's listed
23 in the chronology of events.

24 Q. Okay. And then let's look at
25 what these results, the animals -- the

1 toxicology results show. Okay?

2 If you flip a page forward
3 to -- stand by. If you go to page 703,
4 please. And this is the results listed for
5 the 90-day oral studies for FC-95.

6 That's PFOS, right?

7 A. Yes.

8 Q. And on the left-hand column are
9 the different doses that the rats were given;
10 is that right?

11 A. I believe that's correct.

12 Q. And the next column is the
13 outcome, how many of the rats died, right?

14 A. Yes, I believe that's correct.

15 Q. And the next column is a
16 description of the pharmacotoxic signs and
17 pathology; is that correct?

18 A. Yes, I believe that's correct.

19 Q. And 3M designed these studies,
20 right?

21 A. That -- that's my
22 understanding. I have not reviewed the
23 design of those studies myself.

24 Q. Okay. But 3M decided to do
25 studies, and 3M decided on the doses that

1 were selected, right?

2 So they -- the purpose of the
3 study was to inform 3M as to the toxicology
4 of these compounds, right?

5 You're on mute again.

6 A. I'm sorry, yes, I believe
7 that that was the purpose of these studies.

8 Q. Okay. And 3M selected doses
9 that they thought would be informative to 3M
10 with respect to that topic? Is that fair?

11 A. You know, I can't speak to the
12 dose selection for these particular studies.
13 In general, I would agree that it's a goal to
14 select informative dose levels to provide the
15 information that you're -- that you want to
16 get from that study. Or to get meaningful
17 results from that study.

18 Q. And so at least with respect to
19 the rats and the lowest dose, they all
20 survived, thank goodness, but they did notice
21 liver effects in the lowest dose group,
22 correct?

23 A. I see that they list some minor
24 liver effects, but the summary doesn't
25 indicate what those might be.

1 Q. Okay. And you go one more
2 level, you go to 100 part per million, and
3 50 percent of the rats died, right? Five out
4 of ten died; is that fair?

5 A. That's what I see in the
6 summary.

7 Q. And they reported convulsions;
8 is that right?

9 A. Yes. There appears to be a
10 typo there.

11 Q. CNS effects, that's central
12 nervous system effects; is that correct?

13 A. That's my understanding.

14 Q. Liver necrosis?

15 A. Yes.

16 Q. Right?

17 Bleeding of the GI tract?
18 That's what hemorrhaging means, right?

19 A. Yes.

20 Q. And the next dose, 300 parts
21 per million, all the rats died, right? Ten
22 out of ten?

23 A. Yes, I see that.

24 Q. They reported emaciation and
25 convulsions; is that right?

1 A. I see that in the summary.

2 Q. And then the next two dose
3 groups, they all died, right?

4 A. Yes.

5 Q. None of the rats survived that
6 were given the doses that were selected by 3M
7 that was meant to inform 3M as to the
8 toxicology of PFOS, right?

9 A. I'm sorry, could you repeat
10 your question?

11 Q. Yes, sir.

12 None of the rats survived, of
13 those that were exposed to the doses that
14 were selected by 3M that was meant to inform
15 3M as to the toxicology of PFOS, fair?

16 A. At the 1,000 PPM and 3,000 PPM
17 levels, yes.

18 Q. Okay. If you turn to the next
19 page, please.

20 And this is the -- similar
21 results, similar study, but this time rather
22 than rats, they're doing it with monkeys,
23 right?

24 A. Yes.

25 Q. And monkeys are often -- I know

1 you're not a toxicologist, neither am I, but
2 we both know that monkeys are considered to
3 be most similar to humans, right, in terms of
4 all the other mammals out there?

5 A. And I would defer to my
6 toxicology colleagues to answer that
7 question.

8 Q. Okay. And let's see here. So
9 if you look at the lowest group, the lowest
10 dose group -- and again, these were doses
11 selected by 3M, right?

12 A. That's my understanding.

13 Q. Okay. And at the lowest dose
14 group selected by 3M, how many of the monkeys
15 died?

16 A. It says that four out of four.

17 Q. So all of the monkeys died at
18 the lowest amount that they were exposed to,
19 correct?

20 A. That's -- that's what this
21 summary appears to indicate.

22 Q. And they also reported
23 anorexia, right?

24 A. Yeah.

25 Q. Body tremors, twitching,

1 convulsions, liver discoloration, right?

2 A. I see those.

3 Q. In all the -- and then if you
4 go up higher -- higher doses, all of the
5 monkeys died, right?

6 A. That's my understanding of this
7 summary.

8 Q. Some of them died as quickly as
9 two days after being exposed to PFOS, right?

10 A. That's how I understand this
11 summary, yes.

12 (Gerber 30(b)(6) Exhibit DL1394
13 marked for identification.)

14 QUESTIONS BY MR. MCWILLIAMS:

15 Q. Now, let's move on to another
16 exhibit, please. Let's go to DL1394, please.

17 MR. ROTTENBERG: Tab 121.

18 THE WITNESS: All right. I
19 have that.

20 QUESTIONS BY MR. MCWILLIAMS:

21 Q. Okay. Sir, do you recognize --
22 do you recognize this as one of the documents
23 you reviewed in preparation for your
24 deposition?

25 A. Yes.

1 Q. Okay. And is this an internal
2 3M memo dated April 12, 1978?

3 A. Yes.

4 Q. And this is meeting minutes of
5 the fluorochemicals technical review
6 committee; is that correct?

7 A. I believe so.

8 Q. And is this exhibit -- is this
9 document marked as confidential within 3M?

10 A. Yes, it is.

11 Q. Let's go to the second page,
12 please, where these meeting minutes are
13 discussed.

14 Second paragraph, please, if
15 you blow that up.

16 You see where it's written that
17 "Recent animals studies have shown that FC-95
18 was more toxic than was previously believed"?

19 Did I read that correctly?

20 A. Yes.

21 Q. And again, FC-95 is PFOS,
22 right?

23 A. That's my understanding.

24 Q. Okay. It continues. It says,
25 "Some chemical workers are exposed to this

1 material and are known to have PFOS in their
2 blood. It was suggested that this
3 information might constitute a substantial
4 risk under the Toxic Substances Control Act."

5 Did I read that correctly, sir?

6 A. Yes.

7 Q. It says, "However, during the
8 discussion it was pointed out that PFOS is
9 present in some employees' blood in trace
10 amounts, and there is no evidence of ill
11 effects from its presence. Furthermore, the
12 fact that FC-95 is toxic in animals gives us
13 no indication that it is harmful at trace
14 levels in man. The committee therefore
15 decided that the currently available
16 information on the toxicity of FC-95 in
17 animals did not constitute a substantial risk
18 under the Toxic Substances Control Act."

19 Did I read that correctly?

20 A. Yes.

21 Q. Okay. So help me figure
22 something out.

23 If the goal of these toxicology
24 studies was to determine whether or not it
25 was toxic at the level people were exposed

1 to, why didn't 3M test those doses?

2 A. That really goes beyond my
3 expertise. I would defer to 3M's
4 toxicologists to answer that question.

5 Q. But this ultimate conclusion to
6 not report this information to the EPA, that
7 conclusion could have been reached without
8 the benefit of any of the data, right?

9 Because you knew the doses
10 going in. You knew the doses were much
11 higher than what your employees or the
12 general public was exposed to, right?

13 A. I'm sorry, can you -- can you
14 rephrase the question?

15 Q. Yeah.

16 The way I understand this
17 decision to not report this toxicology
18 information to the EPA is that the doses that
19 those monkeys received and died from were
20 higher than the doses of exposure among 3M
21 employees or the general public, right?

22 A. In the -- what I read in this
23 section is that, you know, the doses for 3M's
24 workers had been identified, and there were
25 no adverse effects that had been identified

1 associated with those dose levels.

2 Q. Okay. But not in the animals,
3 right?

4 A. But -- I'm sorry?

5 Q. But you never -- 3M never
6 tested these -- those same doses in animals,
7 did they? In controlled experiments?

8 A. Based on the documents that
9 I've reviewed, I have not seen those studies,
10 but I don't have the full testing history.

11 Q. Well, the doses you did test
12 showed toxicity in animals, right?

13 A. The studies that we just
14 reviewed, those 90-day studies, did have
15 deaths of animals at certain dose levels and
16 other effects noted.

17 Q. And as of 1978, 3M was of the
18 opinion that PFOS was more toxic than they
19 had previously believed, right? That's what
20 this document says?

21 A. I see that in the summary here.

22 Q. Yet it was the decision of 3M
23 to not disclose this information to the EPA,
24 nor the fact that their chemical was in the
25 blood of the general population at this time,

1 right?

2 A. That is the conclusion of the
3 TSCA 8(e) committee at that time.

4 (Gerber 30(b)(6) Exhibit DL1395
5 marked for identification.)

6 QUESTIONS BY MR. MCWILLIAMS:

7 Q. Okay. Let's go to another
8 document. Let's go to DL1395.

9 MR. ROTTENBERG: Tab 120.

10 THE WITNESS: All right. I
11 have that.

12 QUESTIONS BY MR. MCWILLIAMS:

13 Q. Okay. And is this a document
14 you reviewed in preparation for your
15 deposition?

16 A. Yes.

17 Q. Okay. And is this an internal
18 confidential memo dated May 10, 1978?

19 A. Yes.

20 Q. And it says, "Those present met
21 on May 8, 1978, to discuss results of the
22 90-day animal studies carried out at the
23 International Research and Development
24 Corporation. The dosing phase of the studies
25 on rats using FC-95, FM-3422 and FC-143 have

1 been completed. Results indicate that FC-95,
2 FM-3422 and FC-143 are toxic."

3 Right?

4 A. I see that.

5 Q. Those were the words that were
6 used by 3M to describe the data they
7 possessed at that point in time with respect
8 to the toxicity of PFOS, right?

9 A. That is the summary in this
10 document, yes.

11 Q. Right.

12 And that's -- the term they
13 chose, the word choice that they chose, was
14 that it's toxic, right?

15 A. That is the word they chose.

16 Q. Then it goes on. It says,
17 "After review of the data and a review of the
18 March 16, 1978 EPA guidelines" --

19 Which we looked at earlier
20 today, right?

21 A. Yes.

22 Q. Okay.

23 -- "for reporting substantial
24 risk under TSCA, it was decided that the
25 toxicity of PFOS does not constitute a

1 substantial risk and should not be reported
2 at this time."

3 Did I read that correctly?

4 A. Yes.

5 Q. So once again, 3M considered
6 its obligations under the law, once again
7 reviewed the toxicology data, and once again
8 decided not to disclose this information to
9 the United States Environmental Protection
10 Agency, correct?

11 A. Yes, they reviewed the results
12 of the studies, they reviewed the guidance
13 available from the Agency, and they concluded
14 that it did not constitute a substantial risk
15 that required reporting.

16 (Gerber 30(b)(6) Exhibit DL1396
17 marked for identification.)

18 QUESTIONS BY MR. MCWILLIAMS:

19 Q. Okay. Let's go to another one.
20 Let's go to DL1396.

21 MR. ROTTENBERG: Tab 18.

22 THE WITNESS: All right. I
23 have that.

24 QUESTIONS BY MR. MCWILLIAMS:

25 Q. And do you recognize this as a

1 document you reviewed in preparation for your
2 deposition?

3 A. Yes.

4 Q. Okay. And is this an internal
5 3M memo dated July 14, 1978?

6 A. Yes.

7 Q. Is the subject fluorochemicals
8 in blood?

9 A. Yes.

10 Q. Okay. And so this is a memo of
11 the meeting that occurred on July 12, 1978;
12 is that correct?

13 A. Yes.

14 Q. The first paragraph says, "The
15 review was called to bring everyone up to
16 date on the present program and status of
17 medical examination of employees, recent
18 investigations of the level of
19 fluorochemicals in blood of employees,
20 information sessions held for concerned plant
21 and laboratory animal" -- "employees, and
22 other recent data which had been made
23 available."

24 Did I read that correctly?

25 A. Yes.

1 Q. Okay. If we go down to the
2 very bottom paragraph, please.

3 You see where it's written,
4 "There was a discussion as to the preferred
5 method of informing industry, the public and
6 the appropriate government agencies about our
7 findings, recognizing that there is no need
8 to report these directly to the EPA under
9 interpretation of the regulations concerning
10 the TSCA."

11 Right?

12 "This is so since we have
13 uncovered no adverse health effects through
14 physical examinations of employees or
15 toxicity tests run on animals."

16 Did I read that correctly?

17 A. Yes.

18 Q. Now, that may have been true
19 with respect to the toxicity tests on animals
20 in 1978, but subsequently you did run tox --
21 you did get results on toxicity tests, and 3M
22 determined it was toxic, right? PFOS?

23 A. That was the previous document
24 we reviewed, correct?

25 Q. Right.

1 But in this document, the
2 rationale for again choosing to not disclose
3 this information to the EPA is that you had
4 no animal toxicology data, right?

5 A. In part. It says, "This is so
6 since we have uncovered no adverse health
7 effects through physical examinations of
8 employees or toxicity tests run on animals."

9 Q. Right.

10 But subsequent to this memo, in
11 this same decade of the 1970s, 3M did obtain
12 toxicology data demonstrating that PFOS was
13 indeed toxic to animals, the mice, the rats
14 and the monkeys, right?

15 A. There were effects observed at
16 the doses administered in those studies.

17 Q. Okay. But nonetheless, 3M
18 decided not to report this information to the
19 EPA, specifically that this chemical they
20 determined to be toxic was present in the
21 blood of the general population, right?

22 A. I'm sorry, can you -- can you
23 rephrase the question?

24 Q. Well, let me just ask it again.
25 But nonetheless, 3M decided not

1 to report this information to the EPA,
2 specifically that this chemical they
3 determined to be toxic was present in the
4 blood of the general population. Correct?

5 A. So 3M, based on the documents
6 I've reviewed, did not at that time report
7 information on the presence of PFOS in the
8 blood of the general population, if I'm
9 understanding your question correctly.

10 (Gerber 30(b)(6) Exhibit DL1507
11 marked for identification.)

12 QUESTIONS BY MR. MCWILLIAMS:

13 Q. Okay. Let's go to the next
14 document, please. DL1507.

15 MR. ROTTENBERG: Tab 102.

16 THE WITNESS: All right. I
17 have that.

18 QUESTIONS BY MR. MCWILLIAMS:

19 Q. And do you recognize this, sir,
20 as a document you reviewed in preparation for
21 your deposition?

22 A. Yes.

23 Q. And are these internal 3M
24 meeting minutes dated November -- excuse me,
25 December 19, 1978?

1 A. Yes.

2 Q. Okay. And it's written: "At
3 the request of F.A. Ubel, a meeting was held
4 on November 22, 1978, to discuss results of
5 the subacute rat toxicity studies on PFOS and
6 others."

7 Right?

8 A. Yes, I see that.

9 Q. It says, "The relationship of
10 fluorochemical levels in the blood of rats
11 was discussed to determine whether there was
12 cause for concern. In the subacute rat
13 studies using FC-95 and FM-3422, the amount
14 of fluorochemical level in rat serum ranged
15 from 100 to 550 parts per million."

16 Did I read that correctly, sir?

17 A. Yes.

18 Q. Okay. And it goes on. It
19 says, "Since this is at least ten times less
20 than the levels observed in the animal
21 studies, and no adverse human effects have
22 been observed, there does not appear to be a
23 problem with these two chemicals."

24 Right?

25 A. Yes, I see that.

1 Q. Even though the dose of PFOS in
2 the blood of the general population had never
3 been tested in animal studies, right?

4 A. That -- you're asking -- I'm
5 sorry. Can you repeat the question?

6 Q. Even though the dose of PFOS in
7 the blood of the general population had never
8 been tested in animal studies, correct?

9 A. I guess I can't speak to the
10 full testing history of these substances or
11 whether that level for the general population
12 was -- was known precisely at that time.

13 Q. Okay. Let's go to the next
14 page, please, sir, the second paragraph,
15 reading "After discussion."

16 It's written, "After
17 discussion, those present agreed that the
18 information we now have concerning PFOS and
19 others does not reasonably support the
20 conclusion that a substantial risk exists
21 under Section 8(e) of TSCA as interpreted by
22 the EPA in their policy statement published
23 on March 16, 1978, Federal Register."

24 Right?

25 A. Yes, I see that.

1 Q. And that's the same Federal
2 Register we looked at this morning that
3 talked about extreme persistence, talked
4 about bioaccumulative potential and
5 nontrivial adverse effects, or even
6 widespread in the environment, right? Talked
7 about all four of those things?

8 A. Yes.

9 And to clarify, nontrivial
10 adverse effects applies to evaluation of
11 environmental end points, looking at human
12 health end points. EPA in its later guidance
13 talks about serious adverse effects.

14 Q. Including death, the outcome
15 experienced by most of those monkeys, right?

16 A. Death is a serious adverse
17 effect, but again, dose level is important,
18 and EPA has additional guidance on how to
19 interpret that information.

20 Q. Okay. But those were the doses
21 that were selected by the scientists at 3M,
22 right?

23 A. That's my understanding.

24 Q. Okay. So once again, 3M
25 considers disclosing this information to the

1 EPA, right?

2 A. Yes. They've recorded that
3 that information was evaluated and considered
4 against EPA's guidance.

5 Q. And once again, they decided
6 not to report?

7 A. Yes, that's my understanding
8 based on this document.

9 Q. And you remember the EPA
10 meeting that 3M attended where it said, if in
11 doubt, report?

12 A. I do recall that document.

13 Q. So 3M was having a lot of
14 meetings about all this data and all this
15 information, right?

16 A. Yes. Based on my review of the
17 documents, they were evaluating information
18 as it was received against EPA's guidance.

19 Q. And the reason for all these
20 meetings and all these meeting minutes is
21 because there were concern within the company
22 that this potentially could be toxic.

23 That's why they did the
24 studies, right?

25 A. I guess I can't -- I can't

1 speak to, you know, the concern, but as far
2 as the evaluation of this information, there
3 was a process in place to evaluate it as it
4 came in for potential reporting obligations.

5 (Gerber 30(b)(6) Exhibit DL1399
6 marked for identification.)

7 QUESTIONS BY MR. MCWILLIAMS:

8 Q. Okay. Now let's go to one
9 more. Let's go to DL1399.

10 MR. ROTTENBERG: Tab 20.

11 THE WITNESS: All right. I
12 have that.

13 QUESTIONS BY MR. MCWILLIAMS:

14 Q. Do you recognize this, sir, as
15 a document you reviewed in preparation for
16 your deposition?

17 A. Yes.

18 Q. And are these confidential
19 meeting minutes dated May 17, 1978?

20 A. Yes.

21 Q. And it says, "Meeting minutes
22 review of animal studies."

23 Right?

24 A. Yes.

25 Q. And the second paragraph says,

1 "After a very brief discussion of the most
2 recent results from the animal studies,
3 M.T. Case, J.E. Long and R.A. Nelson and
4 R.E. Ober agreed that PFOS in others should
5 be regarded as toxic, although the degree of
6 toxicity was left undefined."

7 Did I read that correctly?

8 A. Yes.

9 Q. So once again another meeting
10 was held within 3M, once again the animal
11 toxicology data was reviewed, and once again
12 it was concluded that PFOS should be regarded
13 as toxic, correct?

14 A. And I guess it's not clear to
15 me what standard they're using for that --
16 that determination. And they do note that
17 the degree of toxicity is left undefined,
18 which is important for TSCA 8(e) purposes,
19 but I do see that that is the conclusion
20 recorded there.

21 Q. Okay. Go to the last page,
22 please.

23 And that last paragraph says,
24 "As concluded previously by the full
25 committee."

1 Do you see that, sir?

2 A. Yes.

3 Q. It says, "As concluded
4 previously by the full committee, available
5 data in man indicates that no substantial
6 risk exists under the Toxic Substances
7 Control Act. However, those present urgently
8 recommended that all reasonable steps be
9 taken immediately to reduce exposure of
10 employees to these compounds."

11 Did I read that correctly, sir?

12 A. Yes.

13 Q. So 3M decided that even though
14 they felt there was no potential harm from
15 exposure to these chemicals, in an abundance
16 of caution, those at this meeting urgently
17 recommended that all reasonable steps be
18 taken to immediately reduce exposure, right?

19 A. I see that recorded here.

20 Q. And that's like as a
21 precaution, better safe than sorry, right?

22 A. I guess I can't speak to
23 their -- their thought process there, but
24 that would be generally consistent with my
25 understanding of good industrial hygiene

1 practices.

2 Q. Right.

3 So let me ask you this. What
4 steps, if any, did 3M take to reduce the
5 general public's exposure to PFOS?

6 I see you're taking care of
7 your employees, right?

8 What did you guys do to help
9 the general public who have this chemical in
10 their blood?

11 A. I guess those types of product
12 stewardship actions, I haven't reviewed
13 documents based on that, and I'm not prepared
14 to speak to that.

15 Q. Well, are you aware of anything
16 3M did in the '70s or '80s to reduce the
17 general public's exposure to PFOS?

18 A. And again, that's not something
19 that I've specifically investigated in
20 preparation for today, so I -- I -- I can't
21 cite anything that I'm aware of.

22 Q. Okay. But so sitting here
23 today, you're not aware of any steps 3M took
24 to help reduce the public health exposure to
25 PFOS, even though at the same time,

1 simultaneously, it was taking steps to reduce
2 employee exposure, right?

3 A. Based on the documents that
4 I've reviewed, I have not seen any steps with
5 respect -- you know, product stewardship
6 actions with respect to the general public.

7 Q. Well, let me ask you this.
8 Between 1970 -- this is 1978 -- and you
9 remember that chart I showed you this
10 morning, the graph of POSF production over
11 time?

12 A. Yes.

13 Q. And it looked like an Apple
14 stock graph, right? It went up, up, up?

15 A. In general, it was increasing
16 over that period.

17 Q. All right. So while you guys
18 were decreasing exposure to 3M employees, you
19 were increasing it to the general public by
20 creating more of these chemicals and putting
21 more of them into the stream of commerce and
22 into people's bodies, right?

23 A. I guess I wouldn't agree with
24 that characterization, and that goes beyond
25 kind of my area of expertise. I think that

1 would depend on, you know, the
2 characteristics and use patterns of those
3 products.

4 Q. Okay. But sitting here today,
5 are you aware of any change in character --
6 but you are aware that the production of
7 these chemicals went up, right? Over time?

8 A. Based on -- on the chart we
9 reviewed earlier today, the production volume
10 increased.

11 Q. Okay. And isn't it just
12 therefore common sense that if you had a
13 certain amount in your blood in 1975 and then
14 you only just increased it by like a thousand
15 percent, I think, between 1975 and 2000,
16 isn't it just common sense that the levels in
17 people's blood are also going to go up?

18 A. Again, I think that goes beyond
19 my area of expertise. My understanding is
20 that production volume is just a general
21 surrogate for exposure, and there are a lot
22 more factors that need to be considered.

23 Q. Well, sir, are you aware that
24 3M, specifically Dr. Geary Olsen at 3M, went
25 out and obtained historic blood samples and

1 confirmed that exactly what I suggested did
2 indeed happen, that the concentrations of
3 PFOS in the blood of the general population
4 increased concurrent with 3M's manufacturing
5 increase?

6 A. I did not review that study as
7 part of my preparation for today.

8 Q. Okay. So you didn't review --
9 you haven't reviewed the various studies that
10 3M has done on PFOS and the concentrations of
11 PFOS in the blood of the general population
12 in preparation for your deposition today?

13 A. I have not reviewed all of the
14 studies available, you know, the totality of
15 the science in this area. I have reviewed
16 the materials that are relevant to 3M's
17 obligations and considerations under TSCA.

18 (Gerber 30(b)(6) Exhibit DL1353
19 marked for identification.)

20 QUESTIONS BY MR. MCWILLIAMS:

21 Q. All right. Let's go to one
22 more. Let's go to DL1353.

23 MR. ROTTENBERG: Tab 61.

24 THE WITNESS: All right. I
25 have that.

1 QUESTIONS BY MR. MCWILLIAMS:

2 Q. Okay. And do you recognize
3 this as a document you reviewed in
4 preparation for your deposition?

5 A. Yes, I believe so.

6 Q. Okay. And do you see that this
7 is a review of final reports and summary of
8 the toxicology testing we've been discussing
9 here this last session?

10 A. Yes.

11 Q. Okay. And can you please read
12 to the jury the very first sentence under
13 Overall Summary and Recommendations?

14 A. "FC-95 was the most toxic of
15 the three compounds studied and certainly
16 more toxic than anticipated."

17 Q. Okay. So my question to you,
18 sir: Are you aware of any communication from
19 the EPA -- excuse me, from 3M to the EPA
20 disclosing 3M's opinion that PFOS is toxic,
21 and more toxic than anticipated, and present
22 in the blood of the general population prior
23 to the disclosure in 1998?

24 A. I'm not aware of the disclosure
25 that it contains, you know, all of those

1 elements, you know, prior to 1998.

2 Q. Are you aware of any disclosure
3 that contains any of those elements that
4 occurred prior to 1998, where 3M told the EPA
5 that PFOS was toxic or that it was present in
6 the blood of the general population or that
7 it was more toxic than anticipated?

8 A. Based on the documents that
9 I'm -- that I've reviewed, I am aware of 8(e)
10 reports that 3M did submit regarding some
11 teratology studies. And as part of that, 3M
12 also provided information on blood levels
13 that had been measured in its workers.

14 Q. Okay. And you're talking about
15 the 1980 8(e) report where you disclosed the
16 lens -- the birth defect in rats study?

17 A. Yes.

18 Q. And in that disclosure, you --
19 3M told the EPA that about 150 people were
20 exposed to those chemicals -- to PFOS, right?

21 A. It was describing the worker
22 exposure in that case and the levels that had
23 been measured in its workers.

24 Q. Right.

25 But it made no mention

1 whatsoever of the -- of the fact that 3M was
2 aware that PFOS was present in the blood of
3 the general population, right?

4 A. That report did not discuss
5 PFOS in the general population. And again,
6 my understanding is that, you know, that --
7 the specifics of that understanding has
8 evolved over time.

9 Q. You keep saying that, and that
10 doesn't make it any more true, but good on
11 you.

12 But you agree with me that -- I
13 mean -- and I believe you agreed to this
14 earlier today, that it's not just disclosing
15 the adverse effect, but you also have to
16 disclose the extent of exposure, right?
17 Because of that sliding scale thing we talked
18 about?

19 A. No, not -- not necessarily.

20 So in EPA's reporting guidance,
21 it's -- you know, it's the information that
22 you've received that's disclosed. So in the
23 case of like a toxicology study, it would be
24 disclosure of the results of that toxicology
25 study.

1 Q. Why would you -- why did you
2 tell the EPA that 150 employees were exposed
3 if they don't need -- if they don't care
4 about expo -- how many people are exposed?

5 A. I guess I can't speak to the
6 reasoning of the people who prepared that
7 notice at the time.

8 Q. Okay. But it was a deliberate
9 decision by someone at 3M to tell EPA that
10 150 people -- employees were exposed, but not
11 tell them that the 200 million Americans in
12 existence at the time were also exposed,
13 right? That was a deliberate decision?

14 A. Based on the documents that
15 I've reviewed, I would not characterize it
16 that 3M knew that 200 million people had been
17 exposed to these substances.

18 Q. Okay. I can't get y'all's
19 story straight.

20 So either -- so did 3M -- did
21 Guy and Taves put 3M and the EPA on notice
22 that PFOS was in the blood of the general
23 population or not?

24 A. So they had noted the results
25 of organic fluorine from pooled blood samples

1 from the general population. Based on the
2 documents that we've reviewed, 3M recognized
3 the possibility that that involved PFOS.

4 Because they were pooled
5 samples and there were certain methodological
6 issues with the study, the incidence rate and
7 the concentrations in individuals were
8 unknown at that time.

9 MR. MCWILLIAMS: Move to strike
10 as nonresponsive.

11 QUESTIONS BY MR. MCWILLIAMS:

12 Q. Sorry, I need you to answer
13 this question.

14 Did the publication by Guy and
15 Taves put the EPA and 3M -- well, strike
16 that.

17 Sir, did the publication by Guy
18 and Taves put 3M on notice that PFOS may be
19 present in the blood of the general
20 population; yes or no?

21 Either you do think it put them
22 on notice or you don't, and I need you to
23 answer that one way or the other, please.

24 A. Right.

25 So my understanding based on

1 the review of the documents is that 3M
2 recognized the possibility from that
3 information.

4 Q. So that's a yes, it did put 3M
5 on notice of the possibility?

6 A. Yes. The possibility was
7 recognized, based on the work of Newmark and
8 others.

9 Q. Okay. Have you seen any
10 evidence that EPA was made aware of that
11 notice, as you call it, prior to May of 1998?

12 A. And, I'm sorry, which notice
13 are you referring to?

14 Q. Of the presence of PFOS in the
15 blood of the general population that you said
16 came from Guy and Taves.

17 A. So the Guy and Taves paper
18 would be in the -- in -- published in
19 literature, and so that could be considered
20 known to the administrator. So the extent of
21 the information that was in that study would
22 potentially be available to the EPA.

23 Q. Okay. Now, have you seen any
24 documentation of that, that 3 -- that EPA was
25 aware that PFOS was present in the blood of

1 the general population prior to May of 1998?

2 A. I'm sorry, I'm trying to think
3 back through the documents I've reviewed.

4 Not that I recall.

5 Q. Okay. Thanks. I haven't seen
6 that either.

7 (Gerber 30(b)(6) Exhibit LP190
8 marked for identification.)

9 QUESTIONS BY MR. MCWILLIAMS:

10 Q. Let's go to one more. Let's go
11 to LP190.

12 MR. ROTTENBERG: Tab 42.

13 THE WITNESS: All right. I
14 have that.

15 QUESTIONS BY MR. MCWILLIAMS:

16 Q. Okay. And is this a document
17 you reviewed in preparation for your
18 deposition?

19 A. Yes, I believe so.

20 Q. Okay. And this is -- and this
21 is a -- meeting minutes of the fluorochemical
22 technical advisory committee, right?

23 A. That's correct.

24 Q. And this is a meeting that
25 occurred on June 27, 1994, correct?

1 A. Yes.

2 Q. Okay. And the executive
3 summary states, "The fluorochemical technical
4 advisory committee met to review the draft
5 health hazard summary which has been
6 completed for PFOS."

7 Right?

8 A. Yes, it notes that, yeah, FC-95
9 may be technical grade or a purified
10 material, and that refers to PFOS.

11 Q. Okay. And let me ask you this.
12 What is a data gap?

13 A. A data gap?

14 Q. Yeah.

15 A. So I guess there is, you know,
16 a list of identified data gaps that explains
17 specifically what they were looking at on the
18 following page, but in general, my
19 understanding is a data gap is information
20 that's not available.

21 Q. Okay. And so -- and in
22 toxicology there are -- you go about trying
23 to determine what level causes adverse
24 effects, right? That's one goal of
25 toxicology studies, right?

1 A. That's my understanding, yes.

2 Q. Another goal of toxicology is
3 to determine what dose does not cause adverse
4 effects, right?

5 A. Yes. And this is outside my
6 area of expertise, but that's my general
7 understanding.

8 Q. Right.

9 And that's defined as the
10 NOAEL, N-O-A-E-L, the nonobserved-adverse-
11 effect level, right? That's the level at
12 which you know people can be exposed that's
13 safe, right?

14 A. So my understanding of that
15 term is -- you know, it refers to, you know,
16 specific studies that -- the dose level at
17 which no adverse effects were identified.

18 Q. Right.

19 And go to the next page,
20 please, sir. Go to page -- bullet point
21 number 7. And as of 1994, as late as 1994,
22 3M identified this as a data gap, meaning 3M
23 did not know what level of PFOS was safe,
24 right?

25 And would -- excuse me. Joe,

1 would you also blow up the very top of that
2 document, the identified data gaps, so it's
3 clear what we're all talking about here?
4 Yeah.

5 This is one of many data gaps
6 identified, and the number 7 data gap was the
7 no-observed-adverse-effect level, NOAEL, is
8 not known for PFOS, right?

9 A. I see that recorded here.

10 Q. Okay.

11 A. I would rely on my toxicology
12 colleagues to unpack the significance of
13 that.

14 Q. But do you have any reason to
15 disagree with my interpretation of that?

16 A. I'm sorry, could you restate
17 your interpretation?

18 Q. Yeah.

19 That as of 1994, 3M had not
20 established what a safe level of exposure to
21 PFOS was.

22 A. I don't know that I'd agree
23 with that characterization. I think that --

24 Q. Can you tell me why not?

25 A. So -- because 3M had been

1 operating under information that it had based
2 on, you know, historical usage and its
3 investigation of worker exposure and health
4 outcomes. So I think, you know, 3M was
5 operating based on information there, based
6 on the documents that I've reviewed.

7 Beyond that, with specific
8 toxicology end point data gaps, that's kind
9 of beyond my area, and I'd refer to 3M
10 toxicologists to address those questions.

11 (Gerber 30(b)(6) Exhibit DL1574
12 marked for identification.)

13 QUESTIONS BY MR. MCWILLIAMS:

14 Q. Okay. Well, let's go to
15 DL1574. I'm going to make a little
16 demonstrative with you again, if that's okay.

17 Okay. And again, these are
18 documents we've just reviewed. DL1394, the
19 quote I pulled is, "Recent animal studies
20 have shown that PFOS is more toxic than was
21 previously believed."

22 Is that a fair characterization
23 of DL1394, sir?

24 A. I do recall that excerpt from
25 that document.

1 Q. Okay. The next one is DL1395.
2 And I'm missing a quote, but it should say,
3 quote, "Those present met to discuss results
4 of the 90-day animal studies. Results
5 indicate that PFOS, FC-3422 and PFOA are
6 toxic."

7 Is that a fair characterization
8 of that document, DL1395?

9 A. I believe that's an accurate
10 excerpt.

11 Q. Okay. And the next one is
12 DL1353. Quote, "PFOS was the most toxic of
13 the three compounds studied and certainly
14 more toxic than anticipated."

15 Is that a fair characterization
16 of Exhibit DL1353, sir?

17 A. I do recall that statement from
18 that document, sir.

19 Q. The next one is DL1399. Quote,
20 "After a brief discussion of the most recent
21 results from the animal studies, 3M
22 scientists agreed that PFOS, FM-3422 and PFOA
23 should be regarded as toxic, although the
24 degree of toxicity was left undefined."

25 Is that a fair characterization

1 of Exhibit DL1399, sir?

2 A. I believe that that's an
3 accurate excerpt from that document.

4 Q. Okay. So 3M has reports of a
5 chemical they make being widespread in the
6 blood of the general population, 3M has
7 evidence of the potential for
8 bioaccumulation, and now 3M has concluded
9 that PFOS is toxic, right?

10 As of 1978, all three of those
11 things had occurred, right?

12 A. I'm sorry, can you -- can you
13 step back through those questions?

14 Q. Yeah.

15 As of 1978, 3M had determined
16 or -- strike that.

17 As of 1978, 3M was in
18 possession of information indicating that a
19 chemical it made, PFOS, was present in the
20 blood of the general population, had the
21 potential to bioaccumulate, and was toxic in
22 animals, fair?

23 A. So I guess to rephrase based on
24 my understanding of the documents that --

25 Q. I need you to answer my

1 question, not rephrase it and repackage it.

2 Okay? Can you try to answer my
3 question, please? Do you want me to ask it
4 again?

5 A. Sure.

6 Q. Sir, is it true that as of
7 1978, 3M was in possession of information
8 indicating that a chemical it made, PFOS, was
9 present in the blood of the general
10 population, had the potential to
11 bioaccumulate, and was toxic in animals? Is
12 that fair?

13 A. I would say 3M had information
14 about the possibility of all three of those
15 things.

16 Q. Okay. I can take that.

17 But -- and -- never mind.

18 All right. So in light of
19 evidence of those three things, are you aware
20 that 3M went outside of the company and
21 sought outside consultants, external
22 consultants, specifically to help 3M
23 determine whether or not they should report
24 this information to the EPA?

25 A. Is there a specific time that

1 you're referring to?

2 Q. Yes, sir. 1978.

3 A. 1978. I -- I don't recall
4 reviewing that in my documents.

5 Q. All right. Well, let's see if
6 this refreshes your recollection. Pull up
7 DL1553, please.

8 And I don't think we disclosed
9 this, guys, but this was on his list of
10 documents he considered, I believe.

11 MR. WOODS: Okay.

12 QUESTIONS BY MR. MCWILLIAMS:

13 Q. So it's just a one-page
14 document. Can we just look at this together,
15 sir, on the screen?

16 A. Would it be possible to put a
17 link up so I can put this on my larger
18 screen?

19 Q. Yeah, we can do that.

20 Lara, would you be so kind as
21 to do that for the witness?

22 JOE WILLS: This has been added
23 to the marked exhibits folder as well.

24 MR. MCWILLIAMS: Thank you very
25 much.

1 Lara, your voice has changed.

2 JOE WILLS: And I'm sorry, what
3 was the DL number for it?

4 MR. MCWILLIAMS: 1553.

5 JOE WILLS: There it is.

6 (Gerber 30(b)(6) Exhibit DL1553
7 marked for identification.)

8 QUESTIONS BY MR. MCWILLIAMS:

9 Q. All right. So do you recognize
10 this document as a document you reviewed in
11 preparation for your deposition?

12 A. Not -- not specifically.

13 Q. Okay. Well, let's go through
14 it together.

15 You see this is an internal 3M
16 memo dated June 1, 1978?

17 A. Yes.

18 Q. Okay. And it's the same group
19 of individuals we've seen on lots of these
20 documents from this time frame; is that fair?

21 A. Yes.

22 Q. Okay. And you see that it's
23 written -- and again, this is marked
24 "confidential"; is that right?

25 A. Yes, I see that.

1 Q. Okay. And it says, "This
2 meeting is being called to consider the use
3 of an outside consultant to review our
4 results to date in the fluorochemicals in
5 blood program."

6 Did I read that correctly, sir?

7 A. Yes.

8 Q. Okay. And the fluor -- okay.
9 And it goes on. It says, "Mr. Lehr has
10 specifically requested that an outside
11 consultant review our results and render an
12 independent opinion as to whether we are
13 correct in our assumption that we do not have
14 a reportable situation under Section 8(e) of
15 TSCA."

16 Right?

17 A. I see that.

18 Q. Okay. And do you remember the
19 EPA guidance that we looked at -- excuse me,
20 from the meeting minutes from the meeting at
21 EPA?

22 What was the -- remember they
23 said the whole afternoon could be summed up
24 in four words? Do you remember those --

25 A. I remember that summary.

1 Q. Do you remember what those four
2 words were?

3 A. I believe you're referring to
4 "when in doubt, report."

5 Q. Yeah, I think "if in doubt,
6 report."

7 Okay. And does this document,
8 DL1553, indicate to you there was perhaps
9 some doubt within 3M as to whether or not
10 they were supposed to report this information
11 to the EPA?

12 A. I guess I can't speak to the
13 state of mind of the people that prepared
14 this document. They talk about they have an
15 assumption that they do not have a reportable
16 situation, and it appears to me that they're
17 looking for independent validation of that
18 view.

19 Q. Okay. You don't usually need
20 independent validation if you're confident in
21 a decision you make, right?

22 A. I guess speaking from my own
23 experience with TSCA, there are cases where
24 we do want to independently validate our
25 decisions because we want to be sure we're

1 correct.

2 Q. Okay. You don't just err on
3 the side of disclosure?

4 A. It depends on the situation,
5 but there are times where we seek independent
6 validation of our views because we want to be
7 correct.

8 Q. Okay. But generally in your
9 experience at 3M, does 3M err on the side of
10 disclosure?

11 A. So I know that it has at
12 certain times, that that would include during
13 the TSCA 8(e) audit, and I would say in our
14 current practices in the 8(e) committee, that
15 there is a bias toward reporting.

16 (Gerber 30(b)(6) Exhibit DL898
17 marked for identification.)

18 QUESTIONS BY MR. MCWILLIAMS:

19 Q. Okay. Let's go on to DL898,
20 which is meeting minutes from -- with one of
21 these outside consultants.

22 Do you recognize Dr. H.C. Hodge
23 as one of the outside consultants that 3M
24 utilized in helping it determine whether or
25 not to report this information to the EPA?

1 A. Yes, I recall Mr. Hodge from
2 one of the previous documents we discussed.

3 Q. I think it's Dr. Hodge, but I
4 won't -- I won't tell him you called him
5 mister.

6 Do you have this document? I'm
7 sorry, we're waiting on --

8 A. Yeah, Dan.

9 MR. ROTTENBERG: Yeah, it looks
10 like it's 178.

11 THE WITNESS: All right. Just
12 a moment, please.

13 All right. I have that.

14 QUESTIONS BY MR. MCWILLIAMS:

15 Q. Okay. And is this one of the
16 documents you reviewed in preparation for
17 your deposition?

18 A. I believe so.

19 Q. Okay. And is this internal --
20 is this labeled "Draft Meeting Minutes with
21 H.C. Hodge," dated April 26, 1979?

22 A. Yes.

23 Q. Okay. And it says, "Those
24 present met on April 12, 1979, at the Hilton
25 Hotel in San Francisco, California, to review

1 recent results which are relevant to the
2 fluorochemicals in blood program and to
3 discuss future plans."

4 Did I read that correctly, sir?

5 A. Yes.

6 Q. Now based on your review of
7 other documents in this case, did you see
8 that these representatives from 3M traveled
9 to San Francisco from Minnesota on 3M's
10 private jet?

11 A. No, I did not.

12 Q. Have you ever been on 3M's
13 private jet?

14 A. I have not.

15 Q. Okay. Is it usually reserved
16 for higher-ranking executives?

17 And I don't mean that in a
18 disparaging way to you, but is it typically
19 reserved for the higher-ranking executives
20 within 3M?

21 A. Yeah, I guess I don't have
22 visibility who gets to use the private jet.
23 That would be my assumption.

24 Q. Okay. Mine as well. Thank
25 you.

1 So let's go on here. So let's
2 just -- if you go to the third page, please,
3 down at the bottom.

4 You can see where it says,
5 "R.A. Nelson reviewed results of the 90-day
6 subacute toxicity studies using PFOS."

7 Do you see where I'm reading
8 from, sir?

9 A. Yes.

10 Q. And these are the same toxicity
11 studies we've been talking about now for a
12 good hour now after lunch; is that right?

13 A. Yes.

14 Q. Okay. Second sentence says,
15 "Of these compounds, PFOS was the most
16 toxic."

17 Right?

18 A. I see that there.

19 Q. Okay. It says, "It produced
20 deaths in the monkeys at 4.5 milligrams per
21 kilogram."

22 So that's 4.5 parts per
23 million, right?

24 A. Doing the math quick, I believe
25 that's correct.

1 Q. Yeah.

2 And it says, "Target organs in
3 the rat were liver, hemopoietic tissue" --
4 I'm sure I butchered that -- "stomach and
5 small intestine. In monkeys, the apparent
6 target organ was the upper GI tract."

7 Did I read that correctly?

8 A. Yes.

9 Q. Okay. Go to the next page,
10 please, the third paragraph. It says, "H.C.
11 Hodge also presented his summary of results
12 of the 90-day studies." And it says, "These
13 levels" -- hang on. Okay. I skipped a page.
14 Hang on. Let's go down to the bottom of the
15 page.

16 You see at the very bottom it
17 says, "Dr. Hodge recommended the following,"
18 and then there's a colon.

19 And if you go to the next
20 page --

21 A. Sorry. Catching up here. I
22 think I might have skipped the same page.

23 What -- what's the Bates number
24 there?

25 Q. You know, I'll tell you what.

1 Let's just skip to the very last page to move
2 this along.

3 You see there's an addendum?

4 A. Yes, I have that.

5 Q. And it says, "I called
6 Dr. Hodge on April 20."

7 So this is an addendum to these
8 meeting minutes. It sounds like there was a
9 telephone call subsequent to the meeting in
10 San Francisco.

11 Is that a fair reading?

12 A. Yes, I believe so.

13 Q. Okay. He says, "I called
14 Dr. Hodge on April 20, 1979, to give him the
15 acute oral toxicity data on PFOS, which was
16 generated at IRDC prior to the 90-day
17 studies."

18 Did I read that correctly?

19 A. Yes.

20 Q. So it sounds like not all
21 toxicity data had been shared with Dr. Hodge
22 at the meeting. Some had been sent to him
23 subsequent to the meeting, and then that's
24 what prompted this phone call; is that fair?

25 A. That appears to be what this

1 reflects.

2 Q. Okay. And then -- so he asked
3 for these -- he asked that the following be
4 added to the meeting minutes, right?

5 A. Yes, I see that.

6 Q. And meeting minutes are meant
7 to accurately reflect what occurs at a
8 meeting, right?

9 A. That's my understanding of the
10 general purpose of meeting minutes.

11 Q. Right.

12 And this outside consultant
13 that 3M was asking help on whether or not to
14 disclose certain information to the EPA asked
15 for this particular information to be added
16 to the meeting minutes, right?

17 A. Yes.

18 Q. And he -- the information he
19 wanted added to the meeting minutes were,
20 quote, "The study of levels of FC-807 or its
21 metabolites is of utmost importance in
22 determining possible future problems."

23 Now, 807, that's Scotchban.
24 That's the food packaging stuff, right, we've
25 talked about previously?

1 A. Yes, that's my understanding.

2 Q. It comes in contact with
3 people's food, right?

4 A. That's my understanding.

5 Q. And/or its metabolites, which
6 we know includes PFOS, right?

7 A. Based on the documents I've
8 reviewed, I believe that's correct.

9 Q. Okay. So Dr. Hodge is saying
10 that the study of levels of this food
11 packaging chemical "or its metabolites is of
12 utmost importance in determining possible
13 future problems. It should be determined if
14 FC-807 or its metabolites are present in
15 man."

16 Did I read that correctly, sir?

17 A. Yes.

18 Q. Does that indicate to you that
19 at this point in time 3M did not disclose to
20 Dr. Hodge that they in fact had information
21 indicating that PFOS was present in man?

22 A. You know, I guess I can't speak
23 to the full scope of what 3M disclosed to
24 Dr. Hodge, but I think that that's a
25 reasonable reading of --

1 Q. Right.

2 A. -- that sentence.

3 Q. And he goes on. He says, "and
4 also what levels they are present and the
5 degree of persistence, or the half-life, of
6 these materials."

7 Right?

8 So Dr. Hodge is saying, we need
9 to go out and figure out if this chemical is
10 in people's blood and if it's there for a
11 long time, right?

12 A. And the levels at which they
13 are present.

14 Q. Right.

15 Three things that 3M already
16 knew, right?

17 A. Again, and, you know, the
18 degree of knowledge, I think, is important
19 there, you know, the levels at which things
20 were present, the prevalence in the
21 population, you know, the degree of
22 persistence, those things.

23 Q. Okay. But this -- the plain
24 reading of this document indicates that 3M
25 did not disclose this information about --

1 all the information that was available to 3M,
2 they did not share that with Dr. Hodge.

3 Is that a fair reading?

4 A. And again, I can't speak to
5 what was shared. That appears to be what's
6 reflected in this section.

7 Q. Okay. And let's read this last
8 sentence. And this is what Dr. Hodge wanted
9 added to the meet minutes, remember? Right?

10 A. Yes.

11 Q. And Dr. Hodge wanted the people
12 who attend this to know that "If the levels
13 are high and widespread and the half-life is
14 long, we could have a serious problem."

15 Right?

16 That was the outside
17 consultant. That was his assessment of the
18 information provided to him, right?

19 You're on mute.

20 A. Sorry. Sorry about that.

21 Yes, I see that that's what he
22 asked be added to the minutes.

23 (Gerber 30(b)(6) Exhibit DL1365
24 marked for identification.)
25

1 QUESTIONS BY MR. MCWILLIAMS:

2 Q. Okay. Now, let me show you
3 another document. This is DL1365.

4 MR. WOODS: And, Ned, can we
5 take a break when you get to a
6 stopping point?

7 MR. MCWILLIAMS: Sure.

8 MR. WOODS: If you want to do
9 this document, that's fine.

10 MR. MCWILLIAMS: Yeah, let's
11 finish this document if that's okay.

12 MR. ROTTENBERG: Tab 40.

13 THE WITNESS: All right. I
14 have that.

15 QUESTIONS BY MR. MCWILLIAMS:

16 Q. Okay. And so you see that this
17 is -- again appears to be an almost identical
18 document, only it's not labeled "draft,"
19 right?

20 It's got a different date,
21 dated June 7, 1979, right? And it says,
22 meeting minutes. Meeting with H.C. Hodge,
23 right?

24 A. Yes.

25 Q. And the first sentence again

1 says, "Those present met on April 12, 1979,
2 at the Hilton Hotel in San Francisco."

3 Right?

4 A. Yes.

5 Q. Okay. And so do me a favor --
6 and, Joe, if you could help me, if we could
7 just put the draft meeting minutes next to
8 the final meeting minutes. And again, the
9 draft is DL898, and the final is DL1365.

10 And, Mr. Gerber, I want you to
11 turn to the last page where -- the section
12 that Dr. Hodge wanted added to the official
13 meeting minutes of this meeting, and I want
14 you to tell me if you see anything different,
15 if you see anything missing.

16 And, Joe, just blow up that
17 last paragraph on both of them, of the
18 addendum.

19 Yeah, so that's the draft on
20 the left. If you could do just the last
21 paragraph. Yeah. And that's the draft.

22 If you could do the same thing
23 with the final. Tell me if you see anything
24 missing.

25 No. No. Last page of that

1 one.

2 Do you see it's word for word
3 verbatim, except that last sentence is
4 missing?

5 Do you see that, sir?

6 A. I do.

7 Q. So Dr. Hodge wanted the company
8 to know and wanted the official meeting
9 minutes to reflect that if this chemical is
10 in everyone's blood, and if the half-life is
11 long, you have a serious problem.

12 And that was removed from the
13 official meeting minutes, wasn't it, sir?

14 A. I -- I don't see that final
15 statement in the second copy of the meeting
16 minutes.

17 Q. And Dr. Hodge was the expert
18 that you guys wanted this independent
19 evaluation as to whether or not to disclose
20 certain information to the EPA, right?

21 A. I'm sorry, can we go back to
22 the note about Dr. Hodge?

23 Was it -- was it to get his
24 opinion generally on the fluorochemicals in
25 blood program, or was it specifically looking

1 at reportability for TSCA purposes?

2 Q. That's a great question. Let's
3 pull back up DL1553, and then we'll take our
4 break, Craig.

5 MR. WOODS: Okay.

6 QUESTIONS BY MR. MCWILLIAMS:

7 Q. Mr. Lehr has specifically
8 requested an outside consultant review our
9 results and render independent opinion of
10 whether we are correct in our assumption that
11 we do not have to report this to the EPA
12 under TSCA, right?

13 A. Thank you. Yeah, I wanted to
14 double-check that.

15 Q. And he -- okay. And we'll take
16 a break.

17 MR. MCWILLIAMS: Let's go off
18 the record.

19 VIDEOGRAPHER: The time is
20 2:53 p.m. We are off the record.

21 (Off the record at 2:53 p.m.)

22 VIDEOGRAPHER: The time is
23 3:03 p.m. We're back on the record.

24 QUESTIONS BY MR. MCWILLIAMS:

25 Q. Looking back -- Mr. Gerber, did

1 you get a chance to use the restroom and
2 everything?

3 A. I did.

4 Q. Okay. Good.

5 In TSCA, one of the explicit
6 things that must always be reported is
7 cancer, right?

8 A. That must always be reported?

9 Q. Yes, sir.

10 A. That's one of those end points
11 that EPA says is of high concern, and little
12 to no weight is given to exposure.

13 Q. Right.

14 And so therefore you should
15 pretty much always report it, fair?

16 A. Yeah, that's a strong bias
17 towards reporting in those cases.

18 Q. Got it.

19 And in the -- and the 1978
20 guidance also says that if you -- it's
21 possible that effects less serious than those
22 described in part 5A may be preliminary
23 manifestations of the most serious effects,
24 right? And therefore reportable?

25 A. I'm sorry, can you -- can you

1 repeat the question?

2 Q. Yes, sir.

3 The 19 -- the March 1978
4 guidance that we discussed this morning also
5 says that -- again, talking about those most
6 serious effects like cancer or birth defects,
7 that it's also reportable if you -- if you
8 find preliminary manifestations of those more
9 serious effects, that those should be
10 reported as well, right?

11 A. Yeah, I remember that reference
12 with respect to neurotoxicity in particular.

13 Q. Okay. Yeah.

14 But it would make sense if
15 it's -- if you see early preliminary
16 indications of neurotoxicity, it should be
17 reportable, the same would be true for those
18 other very serious adverse effects like
19 cancer and birth defects, right?

20 A. If they reasonably supported a
21 conclusion of a substantial risk.

22 Q. Right. Okay.

23 And so let's -- and so we
24 talked about the outside consultant,
25 Dr. Hodge, that was brought in, who you

1 guys -- certain people at 3M flew out to San
2 Francisco to meet with him at the Hilton
3 Hotel, right?

4 We just looked at those
5 documents?

6 A. Yes.

7 Q. Okay. And that meeting
8 occurred on April 12, 1979; is that right?

9 A. Yes.

10 Q. Okay. And, sir, are you aware
11 that one day later, on April 13, 1979, those
12 same individuals that flew on the 3M jet to
13 San Francisco flew to Houston, Texas, to meet
14 with another external consultant?

15 A. I don't -- I don't recall that
16 document specifically.

17 (Gerber 30(b)(6) Exhibit DL1227
18 marked for identification.)

19 QUESTIONS BY MR. MCWILLIAMS:

20 Q. Okay. Well, let me pull it up.
21 Let's see if this refreshes your
22 recollection. Pull up DL1227.

23 MR. ROTTENBERG: That's
24 Tab 116.

25

1 QUESTIONS BY MR. MCWILLIAMS:

2 Q. You're on mute again, sir.

3 A. Yes, I have that document.

4 Q. Okay. And do you recognize
5 this as a document you reviewed in
6 preparation for your deposition?

7 A. I believe so.

8 Q. Okay. And you see these are
9 draft meeting minutes with a Dr. J.R.
10 Mitchell; is that right?

11 A. Yes.

12 Q. And it says, "Those present met
13 on April 13, 1979, at the Host International
14 Hotel in Houston, Texas, to review recent
15 results which are relevant to the
16 fluorochemicals in blood program and to
17 discuss future plans."

18 Did I read that correctly, sir?

19 A. Yes.

20 Q. Okay. And this -- you can look
21 back at the -- Dr. Hodge. You can see that
22 this is one day later. Same individuals, one
23 day later, different consultant, different
24 city, right?

25 A. Yes.

1 Q. Okay. And you understand that
2 Dr. Mitchell was a toxicologist, right?

3 A. I'm not familiar with
4 Dr. Mitchell's background.

5 Q. Would you accept my
6 representation that he was a toxicologist at
7 Baylor University?

8 A. Yes.

9 Q. Okay. And I want you to look
10 at these draft meeting minutes, and you can
11 see -- if you turn to page 4, it says, "J.R.
12 Mitchell then summarized the meeting in the
13 form of a slide as follows."

14 Right?

15 And this is Dr. Mitchell
16 summarizing the meeting he just had with
17 representatives from 3M, right?

18 A. That's my understanding.

19 Q. Okay. Do you see that he has a
20 list of -- he -- of what he's identified as
21 people at risk?

22 A. Yes.

23 Q. Okay. And do you see where
24 public health and the environment are
25 identified as people at risk?

1 A. I see that. I guess I'm not
2 sure what -- what he means by that phrase.

3 Q. Okay. Well, I guess we'll let
4 the jury figure out what they think.

5 And do you see he also
6 discussed legal issues? Right?

7 A. Yes.

8 Q. And specifically, one of the
9 legal issues they discuss was TSCA
10 Section 8(e), the topic you were -- what
11 today is all about, right?

12 A. Yes.

13 Q. Okay. And so does this refresh
14 your recollection that Dr. Mitchell is one of
15 the outside consultants that 3M consulted
16 with in determining whether or not it should
17 report to the EPA what it knew about PFOS?

18 A. Yes, I believe so.

19 Q. Okay. Now, do me a favor.
20 Turn to page 3. And you can see in the
21 middle of the page it says, "R.A. Nelson
22 reviewed results of 90-day subacute toxicity
23 studies using PFOS and others."

24 Right?

25 A. Yes.

1 Q. And these are the same toxicity
2 studies we've been talking -- we've been
3 discussing now for the last couple hours; is
4 that fair?

5 You're on mute.

6 A. I'm sorry.

7 I believe so.

8 Q. Okay. And it says, "J.R.
9 Mitchell made the following comments."

10 And J.R. Mitchell is the
11 outside consultant. He doesn't work at 3M,
12 right?

13 A. That's my understanding.

14 Q. Okay. And then what is the
15 third comment he provides to these
16 individuals at 3M?

17 A. "Some of the symptoms in
18 animals from these 90-day studies are similar
19 to those observed with carcinogens."

20 Q. And again, carcinogens are one
21 of those things you always have to report.
22 There's a very strong bias in favor of
23 reporting under TSCA Section 8(e); is that
24 correct?

25 A. If there's information

1 sufficient to reasonably support a
2 conclusion.

3 (Gerber 30(b)(6) Exhibit DL1372
4 marked for identification.)

5 QUESTIONS BY MR. MCWILLIAMS:

6 Q. Okay. And I want you to now --
7 now, these are the draft meeting minutes. I
8 now want you to look at the final meeting
9 minutes, and I want you to see if you see any
10 interesting comments that have been removed.

11 Let's go to DL1372.

12 MR. ROTTENBERG: That's Tab 83.

13 THE WITNESS: All right. I
14 have that.

15 QUESTIONS BY MR. MCWILLIAMS:

16 Q. Okay. Now, in this -- do you
17 recognize this as a document you reviewed in
18 preparation for your deposition?

19 A. I believe so.

20 Q. Okay. And can you agree -- do
21 you agree with me, sir, that these are the
22 final version of the meeting minutes we've
23 been discussing in DL1227?

24 A. I believe so.

25 Q. They both make reference to a

1 meeting that occurred on April 13, 1979, with
2 J.R. Mitchell, right?

3 A. That's correct.

4 Q. Okay. Now the draft meeting
5 minutes, Dr. Mitchell commented to
6 individuals at 3M that, quote, "Some of the
7 symptoms in animals from these 90-day studies
8 are similar to those observed with
9 carcinogens."

10 Right?

11 A. I recall that from the draft
12 minutes.

13 Q. Okay. Now look at the final,
14 and I want you to tell me if that has been
15 removed from the final meeting minutes. The
16 bottom of page 2, the top of page 3.

17 A. I see earlier on the first
18 page --

19 Q. I'm talking about specifically
20 that -- where J.R. Mitchell made the
21 following comments, 1, 2 and 3.

22 You see 1, 2 and 3 in the
23 draft, and you only see 1 and 2 in the final.
24 And comment number 3, talking about his
25 observation that these are -- these symptoms

1 are consistent with carcinogens, has been
2 removed.

3 Can you confirm that for me,
4 please, sir?

5 A. 5, 6. Sorry. I'm sorry, can
6 you give me just a minute? I want to make
7 sure I'm in the right place here.

8 Q. Yes, please.

9 A. So I do see at the bottom of
10 page 2 and the top of page 3 there are
11 numbers 1 and 2. There's not a number 3.

12 Q. Right.

13 So the comments from
14 Dr. Mitchell that "Some of the symptoms in
15 animals from these 90-day studies are similar
16 to those observed with carcinogens" has been
17 removed from the official meeting minutes.

18 Is that accurate?

19 A. It appears that that particular
20 statement was reviewed. There are additional
21 statements on the first page about C7F15COF
22 might be an excellent alkylating agent and
23 thus a potential carcinogen, and that appears
24 to be consistent between the draft and the
25 final.

1 Q. Okay. I think you misspoke.
2 You said it appears this statement was
3 reviewed. I think you meant was it removed.

4 A. Oh, I --

5 Q. So my question specifically --
6 sir, listen carefully.

7 Is this statement of this -- of
8 the comment by Dr. Mitchell specifically
9 that, quote, "Some of the symptoms in animals
10 from these 90-day studies are similar to
11 those observed with carcinogens," was that
12 particular statement removed from the final
13 meeting minutes?

14 A. I do not see that statement in
15 the final meeting minutes.

16 Q. Okay. So 3M gets reports that
17 a chemical they make is in the blood of the
18 general population. They get reports that
19 its potential to bioaccumulate. They do
20 toxicology testing. They conclude it's toxic
21 in animals in the doses studied. They then
22 decide they need to talk to outside
23 consultants that say whether or not they
24 should report this to the EPA. And the
25 consultants tell them that these results are

1 similar to carcinogens and that if this
2 chemical is in the blood of the general
3 population, you could have a serious problem.

4 And all those statements are
5 removed, and ultimately 3M does not disclose
6 this information to the EPA for another
7 20 years.

8 Is that fair?

9 A. Would you be able to break that
10 question down?

11 Q. No, it's okay. I'll withdraw
12 it. That was a bad question.

13 Okay. Let's go to one more
14 document, and then I'll have one module left
15 and we'll be coasting out of here.

16 (Gerber 30(b)(6) Exhibit DL1411
17 marked for identification.)

18 QUESTIONS BY MR. MCWILLIAMS:

19 Q. Let's go to DL1411. Do you
20 have the tab, guys?

21 MR. WOODS: Daniel?

22 MR. ROTTENBERG: Yeah, sorry.

23 Yeah, 23.

24 If you could not cover the
25 date. I've got them in chronological.

1 Some of the Bates aren't matching up
2 with what we received. Just FYI to
3 you, Joe. Thanks.

4 QUESTIONS BY MR. MCWILLIAMS:

5 Q. You're on mute, sir.

6 A. Boy, you think I'd catch on.
7 Did you say 23?

8 MR. WOODS: Yeah.

9 THE WITNESS: All right. I
10 have it.

11 QUESTIONS BY MR. MCWILLIAMS:

12 Q. Okay. You have DL1411 in front
13 of you?

14 A. Yes, I have that document.

15 Q. And is this a document you
16 reviewed in preparation for your deposition?

17 A. I believe so.

18 Q. Okay. And are these draft
19 meeting minutes of a meeting that was held on
20 May 7th and 11th in 1979?

21 A. Yes.

22 Q. And the date of the minutes
23 themselves is July 26, 1979; is that right?

24 A. That's correct.

25 Q. Okay. And it says, "These

1 meetings of the fluorochemical technical
2 review committee were convened by R.A. Prokop
3 to discuss the recommendations of H.C. Hodge
4 and J.R. Mitchell and to make its own
5 recommendations for future work."

6 Did I read that correctly, sir?

7 A. Yes.

8 Q. And it makes references to two
9 different dates, and those are the dates --
10 those are two days in a row. Those are the
11 dates of the meeting of the minutes we've
12 just discussed that occurred in San Francisco
13 and Houston, Texas; is that correct?

14 A. I believe so.

15 Q. Okay. Let's flip over -- a few
16 pages into it. If you go to page 3, please.

17 I'm sorry. You know, page 1,
18 importantly, at this particular meeting,
19 neither Dr. Hodge nor Dr. Mitchell were
20 present. They were just discussing what had
21 been discussed at the prior meetings where
22 they were present, correct?

23 A. Based on the list of who's
24 present, I believe that's correct.

25 Q. Okay. So with that said, turn

1 to page 3, please.

2 You see there's a number 3,
3 carcinogenicity studies?

4 A. Yes, I see that.

5 Q. Okay. It says, "Hodge
6 suggested that carcinogenicity testing would
7 start with Ames testing and gradually
8 progress into more sophisticated testing as
9 required. On this point, Nelson and Case
10 remarked that teratogenic, reproduction and
11 mutagenic studies would not be adequate for
12 carcinogenicity evaluation. They" --

13 And "they" is Nelson and Case,
14 right, who are the 3M employees?

15 A. I can't say for sure, but I
16 think that's a reasonable reading.

17 Q. Okay. It says, "They feared
18 that when FC-807" --

19 That's the Scotchban food
20 packaging product, right?

21 A. That's my understanding, yes.

22 Q. "They feared that when FC-807
23 gets publicity for any reason, the
24 carcinogenicity issue will assume
25 considerable significance in light of

1 possible long-term persistency of
2 fluorocarbons in blood."

3 Did I read that correctly, sir?

4 A. Yes.

5 Q. Okay. Go to the next page,
6 please.

7 Go to page 5, actually. In the
8 middle of the page, you see where it's
9 written, "Nelson and Case together
10 expressed"?

11 Do you see where I am, sir?

12 A. Yes.

13 Q. Okay. It says, "Nelson and
14 Case" -- those are both 3M employees, right?

15 A. I believe so.

16 Q. Okay. It says, "Nelson and
17 Case together expressed that if we do not
18 carry out long-term animal studies, and if
19 anything goes wrong, all kinds of prices may
20 have to be paid by the committee members and
21 the corporation."

22 Did I read that correctly?

23 A. Yes.

24 Q. And "the corporation" in this
25 context is 3M Corporation, right?

1 A. That's my understanding.

2 Q. "On the other hand, even if no
3 3M fluorochemicals were found in the blood of
4 the general population, all our studies would
5 be a clear demonstration of the diligence on
6 the part of 3M in caring for public health
7 and sharing the goals envisioned in TSCA."

8 Right?

9 A. Yes, I see that.

10 Q. Okay. So 3M is acutely aware
11 of the public health goals and the sharing of
12 information envisioned by TSCA, right?

13 A. Based on my review of the
14 documents, 3M was actively engaged in
15 monitoring the implementation of TSCA and
16 understanding its requirements.

17 MR. MCWILLIAMS: Okay. All
18 right. We're on to the last module.
19 I bet we'll be done in -- well, I'll
20 be done in 30, 45 minutes. Okay,
21 guys?

22 MR. WOODS: That sounds good.

23 QUESTIONS BY MR. MCWILLIAMS:

24 Q. All right. So shifting gears a
25 little bit here, Mr. Gerber, I know you're --

1 one of the other things that you've been
2 asked to be prepared to discuss today is this
3 thing called the Interagency Testing
4 Committee; is that right?

5 A. Yes.

6 Q. Okay. And the Interagency
7 Testing Committee is a -- is a -- a function
8 of TSCA as well, right? Section 4?

9 A. Yes. My understanding is that
10 the committee would recommend substances to
11 the Agency for further testing under
12 Section 4 of TSCA.

13 Q. So TSCA has at least two
14 different parts. On one hand, if a company
15 learns -- obtains information that a chemical
16 they use or make or import can cause injury
17 to person or the environment, they have to
18 report. That's Section 8(e).

19 But also in Section 4, in those
20 chemicals where we don't know yet if it
21 causes injury to person or the environment,
22 the EPA has the authority to require the
23 companies who make that chemical or use that
24 chemical to perform certain toxicology tests.

25 Is that a fair synopsis?

1 A. Yes. 3M has authority under
2 Section 4 of TSCA to issue test rules.

3 Q. You mean EPA has authority?

4 A. I am sorry, yes. Thank you.

5 Q. Okay. And so -- and then the
6 entity that helps determine which company --
7 which chemicals should be tested for
8 toxicology to determine if it's a risk to
9 health or the environment is the Interagency
10 Testing Committee; is that correct?

11 A. Yes. My understanding is the
12 function of that committee is to provide
13 recommendations to EPA for further action.

14 Q. And the Interagency Testing
15 Committee involves components of the federal
16 government that's much broader than just the
17 EPA; is that right?

18 A. I believe so.

19 Q. Right.

20 The Interagency Testing
21 Committee involves the Occupational Safety
22 and Health Administration, also known as
23 OSHA; is that right?

24 A. Yes.

25 Q. It involves the National

1 Science Foundation; is that right?

2 A. I believe so.

3 Q. It involves the National
4 Institute for Occupational Safety and Health.
5 That's NIOSH; is that right?

6 A. I believe so.

7 Q. The National Cancer Institute?

8 A. I believe so.

9 Q. The Department of Commerce?

10 A. I -- I'd have to double-check,
11 but --

12 (Gerber 30(b)(6) Exhibit DL1228
13 marked for identification.)

14 QUESTIONS BY MR. MCWILLIAMS:

15 Q. Okay. Well, let's pull up
16 DL1228 so it's not a memory test and we can
17 look at it together.

18 And right now we're not -- I'm
19 not going to get into the document yet, but
20 if you could just blow up the header, please,
21 just the -- just the top fifth of the
22 document so we can see -- I want to see all
23 of those entities.

24 So we -- yeah, thank you.

25 So we talked about this. So it

1 involves Council for Environmental Quality;
2 is that right?

3 A. Yes.

4 Q. The EPA, of course?

5 A. Yes. I'm sorry, tab?

6 MR. ROTTENBERG: 50. 5-0.

7 THE WITNESS: Thank you. Okay.

8 QUESTIONS BY MR. MCWILLIAMS:

9 Q. Okay. And then there's also
10 liaison agencies which includes the
11 Department of Defense; is that right?

12 A. Yes.

13 Q. And the National Toxicology
14 Program, NTP, right?

15 A. Yes.

16 Q. And they get together every
17 couple of years, and they look -- well, let
18 me back up.

19 Another component of TSCA is
20 that companies are required to report to the
21 EPA chemicals they make or import, correct?
22 And the volume, right?

23 A. Are you referring to the
24 inventory update reporting rule?

25 Q. Yes, sir.

1 A. At that time?

2 Q. Yes, sir.

3 A. Yes. So that -- that would
4 apply to a subset of substances.

5 Q. Okay. But the ITC is this
6 group of all these governmental agencies that
7 get together every couple years, and they
8 look at the inventory reporting data, and
9 they look for chemicals that are made in
10 large quantity where they're not sure if
11 they're safe or not.

12 Is that a fair synopsis?

13 And they consider them for
14 listing, which would potentially result in
15 them being -- the makers of those chemicals
16 being required to test them for toxicology,
17 right?

18 A. So let me try and step through
19 your question.

20 Q. Yes.

21 A. So my understanding is that in
22 this ITC notice, substances were prioritized
23 based on production volume, which would have
24 been derived from that IUR reporting. And
25 from that list, the ITC was attempting to

1 develop a list of priorities to forward on to
2 EPA.

3 Q. Right. Okay.

4 And so then in 1982, the
5 Interagency Testing Committee looked at the
6 production data for POSF and determined that
7 they wanted to learn more about POSF and
8 whether or not it was potentially harmful to
9 human health or the environment; is that
10 fair?

11 A. So their purpose, as I
12 understand it, was to determine whether it
13 should be listed as a priority to recommend
14 to EPA for further testing.

15 Q. Right.

16 And that occurred for POSF in
17 1982; is that right?

18 A. Yes, POSF was one of the
19 substances in that list.

20 Q. And POSF is that substance we
21 looked at on the chart, the graph, that 3M
22 made, over the totality, more than 100
23 million pounds; is that right?

24 A. Yes, 3M was a manufacturer of
25 POSF.

1 Q. And that's the chemical that
2 can convert to PFOS either in the environment
3 or a -- a metabolism in organism, right?

4 A. I understand based on the
5 documents that I've reviewed that POSF can
6 hydrolyze to PFOS.

7 Q. Okay. We've also looked at the
8 documents that talk about metabolism, right?

9 A. I believe so.

10 Q. Yeah. Okay.

11 So let's look at DL1228.

12 Is this a document you reviewed
13 in preparation for your deposition?

14 A. Yes, it is.

15 Q. And is this the formal notice
16 that 3M received when the ITC identified POSF
17 as a chemical it was interested in
18 potentially listing?

19 A. I guess the formal notice would
20 be the Federal Register notice, but then 3M
21 also received this -- this document from the
22 ITC.

23 Q. Okay. And let's read this
24 together.

25 This is dated March 23, 1982;

1 is that right?

2 A. Yes.

3 Q. Okay. And it's addressed to
4 the manager of government relations for
5 health and environment at the 3M Company
6 located in St. Paul, Minnesota; is that
7 right?

8 A. Yes.

9 Q. And the reference is to
10 307-35-7 for POSF, right?

11 A. Yes.

12 Q. And it says, "Dear sir, this
13 letter is a follow-up to the enclosed notice
14 published in the Federal Register on
15 February 25, 1982."

16 Do you see that, sir?

17 A. Yes.

18 Q. And it says, "I am requesting
19 on behalf of the TSCA Interagency Testing
20 Committee, ITC, information on the referenced
21 chemical reported in the TSCA chemical
22 substance inventory as being manufactured by
23 your company. This chemical has been
24 selected in a screening and scoring exercise
25 for in-depth review by the ITC. The purpose

1 of the review is to determine whether or not
2 the chemical warrants designation to the EPA
3 administrator for priority consideration for
4 health and environmental effects testing."

5 Did I read that correctly, sir?

6 A. Yes.

7 Q. "Although you are under no
8 legal obligation, the committee would
9 appreciate receiving any relevant information
10 you may have that has not been published in
11 the open literature. The kinds of
12 information that would be most helpful in
13 assessing the need for testing are outlined
14 in the enclosed Federal Register notice."

15 Did I read that correctly, sir?

16 A. Yes.

17 (Gerber 30(b)(6) Exhibit DL1554
18 marked for identification.)

19 QUESTIONS BY MR. MCWILLIAMS:

20 Q. Okay. Now, let's -- and I
21 found a copy of the registered -- of the
22 Federal Register you guys got, but I did not
23 disclose it. But let's -- maybe we can just
24 pull it -- it's only one page. It's DL1554.

25 Can we put that in his download

1 folder or whatever it's called?

2 Are you able to access that,
3 Mr. Gerber?

4 A. I am refreshing the page.
5 DL1554?

6 Q. Correct.

7 A. All right. I have that up.

8 Q. Okay. And do you recognize
9 this as a Federal Register notice that was
10 referenced and actually attached to DL1228,
11 the March 23, 1982 letter?

12 A. Yes, I recognize this document.

13 Q. Okay. Did you review this
14 document in preparation for your deposition?

15 A. Yes, I did.

16 Q. Okay. So let's go through this
17 together.

18 And it says, "Chemicals to be
19 reviewed by the Toxic Substances Control Act
20 Interagency Testing Committee public meeting
21 and request for information."

22 Did I read that correctly, sir?

23 A. Yes.

24 Q. Okay. And under the summary it
25 says, "TSCA Interagency Testing Committee

1 will hold a public meeting to receive
2 comments and information on a new list of
3 chemicals selected for review by the ITC."

4 Do you see where I'm reading
5 from, sir?

6 A. I do.

7 Q. And then there's a background
8 section where it describes the authority
9 under TSCA, right?

10 And then you go over to the
11 right-hand column, it says, "Eight federal
12 agencies are specified of TSCA, statutory
13 members of ITC," and then it identifies those
14 members; is that correct?

15 A. Yes.

16 Q. And then it goes on to say the
17 ITC has invited five other federal agencies
18 and one national program to basically assist
19 them in this endeavor?

20 A. Yes, I see that.

21 Q. And then it goes -- finally, at
22 the bottom right corner, if you just blow
23 this up, it says, "In developing its
24 designations."

25 Yeah, okay. This is important.

1 This is where they lay out the type of
2 information they were requesting from 3M.

3 Is that fair?

4 A. Yes, this is the information
5 that they've identified as being priority
6 factors.

7 Q. Right.

8 And the type of information
9 they were seeking from 3M, right?

10 A. That is my understanding.

11 Q. Okay. It says, "In developing
12 its designations, the ITC is directed by
13 Section 4(e)(1)A of TSCA to consider,
14 together with all other relevant information,
15 the following priority factors with respect
16 to chemicals under consideration."

17 Number 1 is the quantity
18 manufactured, number 2 is the quantity which
19 will enter the environment, 3 is occupational
20 exposure, and 4 is nonoccupational human
21 exposure.

22 And it goes on. 5 is
23 similarity in chemical structure to other
24 substances that are known to present an
25 unreasonable risk of injury to health or the

1 environment.

2 6 is the existence of data
3 concerning health and environment effects.

4 7 is the extent to which
5 testing will develop useful data on the risk
6 of injury to health or the environment.

7 Did I read those seven
8 considerations accurately?

9 A. Yes.

10 Q. Okay. And let's focus on
11 number 3, for example. That's occupational
12 exposure.

13 So the ITC is requesting
14 information from 3M as to what they know
15 about 3M employees that are exposed to POSF,
16 right?

17 A. Based on the documents I've
18 reviewed, that appears to be 3M's
19 understanding of the request.

20 Q. And number 4 is the
21 nonoccupational human exposure. That will
22 include the general public, right?

23 A. Yes, the general --

24 Q. You're on mute again.

25 A. I'm sorry.

1 Yes, the general public would
2 be included in nonoccupational human
3 exposure.

4 Q. Okay. And so -- and again,
5 that -- and number 6 is the existence of data
6 concerning health and environmental effects,
7 right?

8 A. Yes.

9 Q. Okay. So data concerning
10 health would include animal toxicology data
11 we've been discussing this afternoon, right?

12 That would be an example of
13 health effects, right?

14 A. Yes.

15 Q. That would be an example of
16 data concerning health effects, right?

17 A. Yes. Animal toxicology studies
18 would be -- would be included in information
19 related to health effects.

20 Q. Okay. And 3M's knowledge of
21 the potential for bioaccumulation would be an
22 example of environmental effects, right? And
23 health effects, for that matter. Fair?

24 A. Yeah, it could -- that end
25 point could fall into, you know, one of those

1 categories.

2 Q. Okay. So again, just to recap,
3 at this point in time in 1982, 3M had been
4 provided information suggesting that a
5 metabolite of POSF was present in the blood
6 of the general population, right?

7 A. Information suggesting that
8 from the Guy and Taves articles and 3M's
9 blood bank analysis.

10 Q. Yes, sir.

11 And 3M was in possession of
12 information -- and also, 3M was aware of the
13 metabolism studies, right, that POSF-based
14 products metabolized to PFOS. We saw that in
15 rats, and we saw that in the chronology
16 timeline document, right?

17 A. Yeah, I'd want to double-check
18 the timing of those, but I know that -- that
19 the potential for POSF to hydrolyze to PFOS
20 was recognized at this time and provided to
21 the ITC.

22 Q. Okay. You keep talking about
23 hydrolyzing, and that's in the environment,
24 and I appreciate that. But I'm talking
25 specifically about metabolism and that you --

1 3M was in possession of information from rat
2 studies that POSF-based products,
3 specifically FC-807, the food packaging
4 material, metabolizes to PFOS, right?

5 A. So my understanding is those
6 metabolite studies, like you said, were based
7 on FC-807, not on POSF itself.

8 Q. Right.

9 But that was a POSF-based
10 product, right?

11 A. FC-807 is a downstream product
12 of POSF chemistry, is my understanding.

13 Q. Right.

14 And you already testified this
15 morning that you would agree with Dr. Olsen
16 that PFOS in the blood of an individual would
17 be evidence of exposure to a POSF-based
18 product, right?

19 A. I would rely on Dr. Olsen's
20 judgment.

21 Q. Okay. And so if Dr. Olsen said
22 PFOS in the blood of the general population
23 is evidence of exposure to POSF, you would
24 have no reason to disagree with him, right?

25 A. I'm sorry, can you repeat that

1 question?

2 Q. Right.

3 If Dr. Olsen said PFOS in the
4 blood of the general population is evidence
5 of exposure to POSF, you would have no reason
6 to disagree with him, right?

7 A. So is that what Dr. Olsen said
8 or --

9 Q. Yes, sir.

10 Well, if he said that, you
11 would have no reason to disagree with him,
12 right?

13 A. I would rely on Dr. Olsen as an
14 epidemiology expert for 3M.

15 Q. Okay. And so here we have --
16 therefore, that means that the reports of
17 PFOS in the blood of the general population
18 is really a report of exposure to POSF,
19 right? Nonoccupational exposure. Exactly
20 what the ITC is requesting, right?

21 A. Based on the documents that
22 I've reviewed, I don't think that was 3M's
23 understanding of the request.

24 Q. Okay. Well, that's based on --
25 okay, we'll get to that.

1 And what's the basis of your
2 understanding? Is it the actual response?

3 A. Yes, and I've seen 3M's
4 response to the request. I've also seen
5 documentation of discussions, attending
6 meetings and discussions with EPA personnel
7 regarding the purpose behind the request.

8 Q. Okay. Have you seen any
9 discussions about whether or not they should
10 disclose the evidence they have of PFOS in
11 the blood of the general population?

12 A. Let's see, I don't recall
13 seeing discussion of that.

14 Q. Okay. But now 3M did
15 disclose -- okay. Well, let's look at what
16 3M's response was.

17 Just so we're clear, the ITC is
18 asking for evidence of nonoccupational
19 exposure to POSF and any data concerning
20 health or environmental effects, right?

21 A. Yes.

22 (Gerber 30(b)(6) Exhibit DL1230
23 marked for identification.)

24 QUESTIONS BY MR. MCWILLIAMS:

25 Q. Okay. So let's look at what 3M

1 responded. Let's see what information 3M
2 provided the ITC. Let's pull up DL1230.

3 MR. ROTTENBERG: It's Tab 35.

4 THE WITNESS: All right. I
5 have that.

6 QUESTIONS BY MR. MCWILLIAMS:

7 Q. Okay. And do you recognize
8 this?

9 Is this a document you reviewed
10 in preparation for your deposition?

11 A. Yes.

12 Q. Okay. And is this the formal
13 response from EPA -- I mean, excuse me, from
14 3M to the ITC?

15 A. I believe so.

16 Q. Okay. And is this dated
17 July 15, 1982?

18 A. Yes, it is.

19 Q. Okay. Let's go through this
20 together.

21 So it says, "This memorandum is
22 in response to the notice published in the
23 Federal Register of February 25, 1982,
24 concerning the fourth scoring exercise of ITC
25 of chemicals to be given consideration for

1 the promulgation of testing rules pursuant to
2 Section 4(a) of TSCA. Among the chemicals
3 listed is POSF, a chemical substance
4 submitted for the TSCA inventory by 3M. We
5 hope the information provided herein is
6 sufficient to satisfy ITC that inclusion of
7 this substance in the list of chemicals
8 designated for priority consideration is
9 unnecessary."

10 Did I read that correctly, sir?

11 A. Yes.

12 Q. So it was 3M's desire for the
13 ITC -- well, for the EPA to not conduct
14 additional investigation into the toxicity
15 and exposure for POSF, right?

16 You feel it was unnecessary, is
17 the words 3M used, right?

18 A. Yeah, 3M used the words
19 "unnecessary," that they had provided
20 information that they felt was sufficient to
21 address the questions and therefore that the
22 chemical did not need to be designated as a
23 priority.

24 Q. So 3M did -- expressly desired
25 that EPA not exercise its authority in

1 requiring additional testing in 1982, right?

2 A. My understanding of this
3 response is that, yes, 3M felt that the
4 information they had provided was sufficient
5 and that POSF did not need to be designated
6 as a priority for further testing.

7 Q. Okay. Let's keep reading.

8 It says, "POSF is a chemical
9 intermediate manufactured and processed in
10 significant quantities by 3M for almost
11 30 years. During this period, there has been
12 no indication of unreasonable risk of injury
13 to health or the environment or chronic
14 hazard. So far as we are aware, 3M is the
15 sole commercial manufacturer of this
16 substance in this country and uses it
17 entirely for internal manufacturing."

18 Did I read that correctly, sir?

19 A. Yes.

20 Q. Okay. Let's go to the next
21 paragraph.

22 It says, "The material is
23 manufactured, stored and processed in a
24 closed system with potentially significant
25 exposures to the atmosphere only at open

1 manhole covers and drum-filling stations.
2 Approximately 100 employees are potentially
3 exposed to the material on a regular basis.
4 In the plant, air containing less than .5
5 part per million POSF is encountered. Small
6 amounts, about 100 55-gallon drums of POSF,
7 are shipped to other manufacturing units of
8 3M where an additional 30 employees are
9 potentially exposed less than five days a
10 year."

11 Did I read that correctly, sir?

12 A. Yes.

13 Q. So with respect to the -- to --
14 so the ITC wants to know who's exposed to
15 this chemical, right?

16 And 3M told them, no more than
17 130 people, right?

18 A. They've described the
19 occupational exposure to this substance,
20 POSF.

21 Q. And it makes no mention
22 whatsoever of nonoccupational exposure,
23 right?

24 A. So based on the information
25 that I've reviewed and has been described to

1 the ITC, this information was used solely as
2 an intermediate in the manufacture of other
3 chemicals. And so the occupational exposure
4 would be the exposure to the chemical. POSF
5 itself was not distributed as a product.

6 MR. MCWILLIAMS: I move to
7 strike as nonresponsive.

8 QUESTIONS BY MR. MCWILLIAMS:

9 Q. Sir, do you remember the
10 question I asked you?

11 A. Could you repeat it, please?

12 Q. Yeah.

13 And this makes no mention
14 whatsoever of nonoccupational exposure,
15 correct?

16 A. So this -- this notice does not
17 address nonoccupational exposure to POSF.

18 Q. What do you mean "this notice"?
19 You mean this letter?

20 A. This letter, sorry.

21 Q. Okay. Thank you.

22 Let's keep reading. It says,
23 "Primarily because of low solubility, POSF is
24 relatively unreactive and neutral in acidic
25 aqueous media and can be steam distilled

1 without significant hydrolysis. It reacts
2 controllably with aqueous organic or
3 inorganic strong bases at 50 degrees Celsius
4 or slightly above to form the corresponding
5 salt. In general, the salts have low
6 solubility in water. In solution, POSF
7 reacts vigorously and strongly,
8 exothermically, with primary and secondary
9 amines, and readily" -- "readily with any
10 substance containing active hydrogen in the
11 presence of soluble base, even at room
12 temperature."

13 No idea what that means. Let's
14 keep going.

15 It says, "The acute hazard from
16 POSF is relatively low. When applied to the
17 skin of mice at the level of 200 milligrams
18 per kilogram body weight, no toxic
19 indications were observed. Intravenous
20 injections of mice resulted in LD50 in excess
21 of 300 milligrams per kilogram. Mutagenicity
22 tests, the Ames salmonella typhimurium
23 bacteria strains," blah, blah, blah, "and the
24 yeast recombinant assay using sac" --
25 whatever -- "strain were negative. Each

1 strain was tested with and without a
2 metabolic step."

3 Did I butcher that correctly?

4 A. That's correct.

5 Q. Okay. And it says, "Because of
6 the high cost of manufacturing POSF, every
7 effort is made to minimize losses to the
8 environment. Tarry byproducts of its
9 manufacture containing no more than 1 or
10 2 percent POSF are landfilled or sent to the
11 plant biological wastewater treatment
12 facility. Losses during purification,
13 principally fumes collected in water
14 scrubbers, also go to wastewater treatment,
15 as would the occasional inadvertent spill.
16 It is estimated that no more than
17 3,000 pounds go to landfill, no more than
18 7,500 pounds go to wastewater, and no more
19 than 2,500 pounds go to the atmosphere each
20 year. POSF released to the environment can
21 be expected to hydrolyze slowly to water
22 soluble salt, more rapidly in strongly basic
23 soils. As a salt of a completely fluorinated
24 acid, no significant biodegradation is
25 anticipated. The small amount of salts so

1 formed are not expected to provide
2 significant environmental harm. The
3 properties of similar sulfonates are
4 illustrated in the enclosed product
5 environmental data sheet for a typical 3M
6 product, FC-95."

7 That's PFOS, right?

8 A. Yes, that's my understanding.

9 Q. So in response to the ITC's
10 request for information about what 3M knew
11 about exposure, environmental harm and
12 human -- harm to human health, 3M chose to
13 include some information it knew about PFOS.

14 Is that accurate?

15 A. That's consistent with my
16 review of the documents.

17 Q. Okay. And that's because in
18 3M's view when they wrote this letter, they
19 said the properties of POSF are similar to
20 PFOS, right?

21 A. Sorry, I'm just trying to find
22 that.

23 Q. Yeah, it's the very last big
24 paragraph.

25 A. The properties of similar

1 sulfates are illustrated in the enclosed
2 product environmental data sheet. Yes, I see
3 that.

4 Q. And at this point in time, 3M
5 had information indicating that PFOS had the
6 potential to bioaccumulate, right?

7 A. My understanding, based on the
8 documents I've reviewed, is that, you know,
9 at this point in time the slow elimination
10 had been -- had been viewed in -- in the
11 employee blood data.

12 Q. Okay. So -- and let's actually
13 pull up the two attachments that 3M provided
14 to the EPA. Let's go to DL1346 and DL1347.

15 MR. ROTTENBERG: Tab 52.

16 THE WITNESS: All right. I
17 have Tab 52, product environmental
18 data for FC-95.

19 (Gerber 30(b)(6) Exhibits
20 DL1346 and DL1347 marked for
21 identification.)

22 QUESTIONS BY MR. MCWILLIAMS:

23 Q. Okay. So whenever 3M decided
24 to provide environmental data -- strike that.

25 Whenever the ITC requested

1 environmental data for POSF, 3M provided
2 environmental data for PFOS, right?

3 A. That's part of the information
4 that 3M provided as part of its response to
5 the request.

6 Q. Okay. Do you see anywhere in
7 the information provided to the Environmental
8 Protection Agency Interagency Testing
9 Committee where 3M provided information for
10 PFOS, where 3M disclosed to the ITC that PFOS
11 was present in the blood of the general
12 population?

13 A. Sorry, give me a moment to just
14 read through this again.

15 Q. Okay.

16 A. So I do not see discussion of
17 organic fluorine in the general population as
18 part of this document.

19 Q. Okay. I asked not about
20 organic fluorine. I asked about PFOS, the
21 metabolite of POSF.

22 Do you see any mention of that,
23 of 3M's knowledge of either of those
24 chemicals in the blood of the general
25 population?

1 A. I don't see any information
2 regarding PFOS in the blood of the general
3 population in this document.

4 Q. Okay. Do you see any
5 indication in this document that 3M
6 believed -- of the potential for PFOS, or
7 POSF, for that matter, to bioaccumulate?

8 A. I do see information provided
9 on bioconcentration potential on page 3 of 3.

10 Q. Uh-huh. All right. This is
11 using the -- the N-octanol-water partition
12 coefficient, which is a way to predict a
13 chemical's bioaccumulation potential, right?

14 A. That's my general
15 understanding.

16 Q. Okay. And you agree with me
17 predictions are different than observations?

18 A. In general, yes.

19 Q. You can either look at the
20 weather forecast or you can feel the rain
21 coming down on your face, right?

22 A. I'm sorry, could you rephrase
23 the question?

24 Q. Sure.

25 You could -- if the question

1 is, is it -- does it -- is it raining, you
2 can look at the weather forecast, right?
3 That's a prediction of whether or not it's
4 going to rain, right?

5 A. Yes.

6 Q. Or you could feel the rain
7 hitting your face, right?

8 A. Yes.

9 Q. An actual observation of rain
10 versus a prediction if it's going to rain,
11 right?

12 A. Yes.

13 Q. And this N-octanol-water
14 partition coefficient is a prediction as to
15 bioaccumulation. It's not an actual
16 observation of bioaccumulation, right?

17 A. And I'd let our environmental
18 scientists speak to the strength of that type
19 of information.

20 Q. We'll ask them, but today is my
21 opportunity to ask you.

22 You understand. You and I both
23 know that this N-octanol-water partition
24 coefficient is a tool to predict whether or
25 not a substance can bioaccumulate. It's not

1 an actual measurement of whether or not a
2 substance bioaccumulates, right?

3 A. This is outside my area --
4 outside of my expertise, but that's my
5 general understanding.

6 Q. Right.

7 Okay. So rather than tell the
8 EPA about what you guys actually observed,
9 the rain hitting your face, you instead
10 presented them with a weather forecast,
11 right?

12 A. You know, I don't know that I
13 would characterize it that way. You know,
14 this seems to be, you know, a standard piece
15 of information with, you know, a defined test
16 method there, you know, versus the
17 observation from the employee blood studies.

18 Q. All right. Well, let's keep
19 this open, and let's also pull up DL1570.
20 And I want you to tell me, were any of these
21 observations by 3M about the potential for
22 PFOS to bioaccumulate was disclosed to the
23 EPA in response to requests for information.

24 You remember this exhibit,
25 right, DL1570?

1 A. Yes.

2 Q. Is any of the information from
3 DL1570 that we obtained from internal
4 confidential 3M documents, was any of this
5 disclosed to the EPA in 1982 in response to
6 their very specific request for information
7 3M had about these chemicals?

8 A. Well, to clarify, the request
9 was for information related to POSF.

10 But in response to your
11 question, the information that's referenced
12 on the slide here, I don't see that reflected
13 in the product environmental data sheet.

14 Q. Okay. Let's make sure we look
15 at the other attachment, DL1346. I don't --
16 I want to be complete.

17 MR. ROTTENBERG: That's Tab 51,
18 Jon.

19 THE WITNESS: I have that.

20 (Gerber 30(b)(6) Exhibit DL1346
21 marked for identification.)

22 QUESTIONS BY MR. MCWILLIAMS:

23 Q. Okay. And that's the second
24 attachment that was provided to the EPA -- or
25 the ITC in response to this information

1 request from the ITC, right?

2 A. That's my understanding, yes.

3 Q. Okay. And do you see any
4 reference in there to PFOS being present in
5 the blood of the general population or the
6 bioaccumulation potential of PFOS or the fact
7 that PFOS had been characterized as toxic by
8 scientists within 3M?

9 A. I see health hazards referenced
10 there. I do not see information related to
11 bioconcentration potential and -- I'm sorry,
12 what was the third category you mentioned?

13 Q. That PFOS -- that PFOS had been
14 characterized as toxic.

15 A. So there are -- there are
16 references to animal tests indicate that the
17 sulfonyl fluorides by themselves to be of
18 relatively low hazard.

19 Q. Okay. There's no mention of
20 all the monkeys dying, is there?

21 A. I don't see that specifically
22 reflected in this document.

23 Q. And in fairness, they didn't
24 all die. I think 20 out of 24 died.

25 Does that sound right?

1 A. I would have to double-check
2 the study summary.

3 Q. Okay. But that sounds -- the
4 majority of them died, right?

5 A. At the dose levels that were
6 administered.

7 Q. Right.
8 The dose levels selected by 3M,
9 right?

10 A. That's my understanding.

11 Q. Okay. You know, I just
12 realized I skipped a document this morning.
13 Let's go to LP203.

14 MR. ROTTENBERG: Tab 119.

15 THE WITNESS: Okay. I have
16 that document.

17 (Gerber 30(b)(6) Exhibit LP203
18 marked for identification.)

19 QUESTIONS BY MR. MCWILLIAMS:

20 Q. Do you recognize this as a
21 document you reviewed in preparation for your
22 deposition, sir?

23 A. I believe so.

24 Q. Okay. And is this an internal
25 correspondence within 3M dated April 6, 1978?

1 A. Yes.

2 Q. Okay. And it's from Jon
3 Belisle to many of the same individuals that
4 we've seen the same names on the documents
5 from this time period; is that fair?

6 A. Yes, I believe so.

7 Q. Okay. And it's -- well, let's
8 just go to the second page, please, under
9 Discussion.

10 And this is Dr. Jon Belisle at
11 3M, right, writing this?

12 A. I believe that's correct.

13 Q. Okay. It says, "Discussion. I
14 would suggest that this study feeding FM-3422
15 and a previous study with mice feeding FC-807
16 in which both serums were found to contain
17 PFOS is a significant finding."

18 Did I read that correctly, sir?

19 A. Yes.

20 Q. Okay. And those are both
21 POSF-based products, right? FM-3422 and
22 FC-807?

23 A. That is my understanding.

24 Q. You can tell from the chemistry
25 that they include the POSF head group, right,

1 the C8F17SO2?

2 A. Yes.

3 Q. Okay. And it says -- now, this
4 is a significant finding. "It implies that
5 any 3M product bearing the POSF head group,
6 upon exposure to rats or mice, would generate
7 PFOS."

8 Did I read that correctly?

9 A. I see -- yes, I see that.

10 Q. It says, "which accumulates in
11 the animal's blood and tissue."

12 It continues. It says, "The
13 next step would be to extrapolate these
14 findings to man per Guy and Taves' research."

15 Right?

16 A. Yes, I see that.

17 Q. "Thus, I have suggested before
18 and will state again the significance of
19 characterizing those previous samples from 3M
20 employees exposed to 3M's skin protectants
21 and carpet treatment products."

22 That's like Scotchgard is a
23 carpet treatment product, a POSF-based
24 product, right?

25 A. That's my -- my understanding

1 is that a POSF derivative was used in those
2 products.

3 Q. It says, "If PFOS is found in
4 these person's blood, then the public health
5 issue becomes simply one of frequency and
6 type of exposure to 3M products."

7 Did I read that correctly, sir?

8 A. Yes.

9 Q. And this is entirely in the
10 context of POSF-based products, right?

11 A. Sorry, I'm just going back to
12 review the introduction.

13 So the discussion involves
14 FM-3422 and FC-807, which were POSF
15 derivatives.

16 Q. All right. So now let's --
17 now, you understand as part of the ITC
18 process is they request this information from
19 3M, 3M submits whatever they want. It's
20 voluntary. You're not required -- you could
21 have just thrown away the letter, right?

22 A. There's no obligation to
23 respond.

24 Q. Right.

25 But would you agree with me a

1 good corporate citizen has a duty to respond
2 and to respond thoroughly and accurately?

3 A. Yes, I would agree that that
4 would be, you know, a productive approach.

5 Q. Great. I appreciate that.
6 That's probably the best question and answer
7 I got all day.

8 And then after all the
9 information is submitted to the ITC, the ITC,
10 in conjunction with some consultants,
11 generates a report.

12 Is that accurate?

13 A. That's my understanding, yes.

14 Q. All right. Let's look at the
15 report they generated. This is DL1428.

16 MR. ROTTENBERG: 160. Tab 160.

17 THE WITNESS: Okay. I have
18 that.

19 (Gerber 30(b)(6) Exhibit DL1428
20 marked for identification.)

21 QUESTIONS BY MR. MCWILLIAMS:

22 Q. All right. And this is a
23 document you reviewed in preparation for your
24 deposition today, sir?

25 A. Yes.

1 Q. Okay. I'll be done in five
2 minutes, Gary.

3 Okay. So do you recognize this
4 as the final report issued to the ITC by the
5 consultants based on information provided by
6 3M and others and publicly available
7 information?

8 A. That's my understanding, yes.

9 Q. Okay. And you see this is
10 dated September 22, 1983?

11 A. Yes.

12 Q. And it says it's prepared under
13 EPA contract, whatever, TSCA Interagency
14 Testing Committee, right?

15 A. Yes.

16 Q. Okay. Now let's flip a few
17 pages into it. And this is the information
18 reviewed for POSF, right?

19 A. Yes.

20 Q. And you go to page two little
21 Is.

22 Okay. And you see under the
23 preface it says, "The authors wish to
24 acknowledge the contribution of data by W.H.
25 Pearlson of the 3M Company."

1 Right?

2 A. I see that.

3 Q. Okay. And you've seen his name
4 before on other documents we've looked at
5 today; is that fair?

6 A. Yes, I have.

7 Q. Okay. And he -- and
8 Mr. Pearlson was aware of the reports of PFOS
9 in the blood of the general population,
10 right?

11 A. I'm sorry, POSF?

12 Q. PFOS, yes, sir.

13 A. PFOS? I would have to
14 double-check the distribution lists. I
15 believe that's correct, that he was aware of
16 the findings of Guy and Taves and the Newmark
17 analysis.

18 Q. And the -- and 3M's analysis on
19 the Red Cross blood samples, right?

20 A. Again, I'd have to double-check
21 distribution lists. I believe that's
22 correct.

23 Q. Okay. Okay. And let's flip a
24 couple more pages in.

25 You see three little Is under

1 Overview?

2 You see down at the bottom
3 where it says, "Summary Of Hazard Potential"?

4 A. Yes.

5 Q. It says, "Little information is
6 available on health and environmental effects
7 of the compound."

8 Do you see that, sir?

9 A. Yes.

10 Q. Is that an accurate statement,
11 that as of 1983 little information was
12 available on the health and environmental
13 effects of the compound, at least to 3M?

14 A. I guess I can't speak to the
15 full scope of the science there. I would
16 defer to my toxicology colleagues to
17 characterize the extent of that information.

18 Q. Okay. But clearly the EPA,
19 based on their -- the documents Mr. Pearlson
20 sent them and that 3M sent them, their
21 understanding is that there's little
22 information available, right?

23 A. I see that that's the -- their
24 conclusion.

25 Q. And you see where it says,

1 "Occupational and environmental exposure
2 appear to be low."

3 Right?

4 A. Yes.

5 Q. But at this point in time we
6 have evidence of widespread contamination of
7 the human blood supply with a POSF
8 metabolite, right? PFOS?

9 A. There's the information we
10 previously discussed regarding organic
11 fluorine in the general population blood and
12 the possibility that that's PFOS.

13 Based on the documents that
14 I've reviewed, I understand this evaluation
15 to be focused on POSF.

16 Q. Okay. Well, let's go to
17 page 4.

18 And see the section titled
19 "Biochemical Information"? What does it say
20 under Metabolism? We've talked about this,
21 you know, at length today.

22 3M was in possession of
23 information that POSF-based products
24 metabolized to PFOS, right?

25 A. I -- I recall that from

1 previous questions.

2 Q. Okay. And we saw no reference
3 of that data in 3M's submission to the EPA,
4 is that correct, from 1982 submission?

5 A. Based on the documents that
6 I've reviewed, I have not seen the
7 information on the metabolites of those POSF
8 derivatives.

9 Q. And based on this report, EPA
10 says no information found on this topic of
11 metabolism, right?

12 A. With respect to POSF.

13 Q. Okay. Right.

14 But POSF metabolizes to PFOS,
15 right?

16 A. I see it's noted that it
17 hydrolyzes to PFOS.

18 Q. Yeah, that's not metabolism.

19 You keep trying to go there.
20 Metabolism is in an organism, a living
21 organism, right?

22 A. And -- yeah. And again, my
23 toxicology colleagues can speak better to
24 that.

25 Q. And we will speak to them, I

1 assure you, but today is my opportunity to
2 speak to you. So, Mr. Gerber, if you could
3 just do your best to answer my questions, I
4 would greatly appreciate it.

5 Okay?

6 A. I am trying.

7 Q. Okay. Go to page 4. We
8 already did page 4.

9 Go to page 6 under
10 Bioconcentration.

11 What is written here, sir?

12 A. "The low estimated log
13 octanol-water partition coefficient and its
14 slight suitability in organics indicate POSF
15 will not bioconcentrate to any appreciable
16 extent."

17 Q. Okay. And that's based on that
18 weather forecast, the octanol coefficient,
19 right? The thing that predicts
20 bioaccumulation, not observes it, right?

21 A. That's based on that test
22 result, yes, that predictive test.

23 Q. Okay. Now, as a result of
24 this, did the ITC recommend to the EPA that
25 they require testing of POSF?

1 A. I don't believe so.

2 Q. Okay. But subsequently the ITC
3 has made such a recommendation, haven't they?

4 A. And can -- do we have the
5 specific recommendation --

6 Q. Well, sir, you're aware --
7 you're aware that after 3M disclosed to the
8 EPA that PFOS was present in the blood of the
9 general population, subsequent to that, the
10 ITC recommended for listing, POSF and EPA
11 followed the recommendation.

12 Is that accurate?

13 A. I'd have to review that notice.
14 I'm sorry, I don't have that front of mind.

15 MR. MCWILLIAMS: Okay. Well, I
16 don't have it either, so I think
17 that's all the questions I have.
18 Let's just take a quick break.

19 I know my colleague,
20 Mr. Douglas, has some questions, but I
21 believe that's all the questions I
22 have. So thank you, guys.

23 VIDEOGRAPHER: The time is --

24 MR. WOODS: Yeah, this is
25 Craig. Can we take a short break

1 here?

2 MR. MCWILLIAMS: Yeah, let's do
3 ten minutes. Is that okay?

4 MR. WOODS: That's great.

5 And one other issue. I just
6 want to check on time.

7 VIDEOGRAPHER: You want this on
8 record, Craig? Sorry.

9 MR. WOODS: Let's go off the
10 record.

11 VIDEOGRAPHER: The time is
12 4:10 p.m. We're off the record.

13 (Off the record at 4:10 p.m.)

14 VIDEOGRAPHER: The time is
15 4:22 p.m. We are back on the record.

16 DIRECT EXAMINATION

17 QUESTIONS BY MR. DOUGLAS:

18 Q. All right. Good afternoon,
19 Mr. Gerber. Thank you for your patience all
20 day. I know it's been a long day.

21 I have only -- I promise you
22 I'm not going to be nearly as long as my
23 colleague, Mr. McWilliams. This should be
24 brief.

25 But my name is Gary Douglas.

1 I'm from the law firm Douglas & London in New
2 York City, and I represent plaintiffs in this
3 action. And I just have a few more questions
4 for you, and specifically with respect to
5 plaintiff water provider.

6 So my first question for you,
7 sir, is, you know what a water provider is?

8 A. Yes.

9 Q. Okay. And you're here as a 3M
10 representative today to answer questions of
11 the plaintiff in this case?

12 A. Yes.

13 Q. Okay. And you, I take it, know
14 that PFOS has been found in the drinking
15 water of millions of Americans across the
16 country to date.

17 You're aware of that, right?

18 A. I'm aware of those general
19 results.

20 Q. Okay. And that from New York
21 City to California, from Key West to Alaska
22 and the -- and the US territories, you know
23 that it's been found in those, right? In the
24 drinking water in those areas?

25 A. I'm not familiar with all of

1 the results, but I have that general
2 understanding.

3 Q. Okay. And you know that PFOS
4 has been classified as a PBT, persistent,
5 bioaccumulative and toxic, right?

6 A. I understand that EPA has
7 characterized it that way.

8 Q. Yeah.

9 That's not good, right? You
10 don't want to be drinking a PBT in your
11 water, do you?

12 A. I personally do not.

13 Q. Okay. You think anybody does?

14 A. I guess I can't speak for
15 everybody, but I would guess, you know, in
16 general, no.

17 Q. Okay. And if someone were to
18 put something in your drinking water you
19 didn't want to drink, would you -- would you
20 agree with me that it -- that maybe the right
21 thing, the decent thing, to do would be to
22 tell folks?

23 A. Yes, I would.

24 Q. Okay. And you know that in
25 some of these cases -- I mean, even if I put

1 something, for example, in your water as
2 innocuous -- or perhaps you were drinking a
3 cup of tea during the break, and while you
4 were gone I put something as innocuous as
5 sweetener in your tea, you'd want me to let
6 you know that, wouldn't you?

7 A. Yes, I would.

8 Q. Okay. And you know that in
9 some cases these levels of PFOS have been
10 found to be in excess of the EPA's health
11 advisory of 7 parts per trillion combined
12 PFOA and PFOS.

13 Do you know -- are you aware of
14 that?

15 A. Yes, I'm not aware of all the
16 specific results.

17 Q. But in some cases, indeed it
18 has found to be in excess of that level; is
19 that correct?

20 A. I believe so, but I would -- I
21 would defer to the environmental scientists
22 who study that in more detail.

23 Q. Okay. So -- and so, for
24 example, why is your water -- whoever is
25 paying for it, we don't have to get into

1 that, but why is your water filtered to
2 remove PFOS, if you know?

3 A. I'd have to go back to the
4 Cottage Grove water reports. My
5 understanding, it's based on the detection of
6 PFAS substances in the water.

7 Q. Okay. And as a spokesperson
8 for 3M, is there any specific level that you
9 would agree poses a risk, a level of PFOS in
10 drinking water that poses a risk?

11 A. That's really outside my area
12 of expertise. I would defer to our
13 toxicologists for that.

14 Q. Okay. And we -- I think we
15 have agreed, PFOS and its precursors, like
16 POSF, was a compound that had been
17 manufactured by 3M. This compound that's
18 been found in drinking water across the
19 country is a compound that has been
20 manufactured by 3M for decades, since the
21 1950s, in fact.

22 Do you agree with that?

23 A. That's my understanding, yes.

24 Q. Okay. So the first document I
25 want to go to is just go back to one you

1 already discussed, which is DL1423.

2 Joe, if you could pull that up.

3 You recall my colleague,

4 Mr. McWilliams, went through this document

5 with you?

6 A. I do.

7 Would it be possible if I can

8 pull it up again?

9 Q. Whatever you need to do.

10 MR. WOODS: What was that

11 again?

12 THE WITNESS: I'm sorry, I

13 missed the number.

14 MR. ROTTENBERG: 167.

15 THE WITNESS: Thank you.

16 QUESTIONS BY MR. DOUGLAS:

17 Q. And I'm only going to ask you

18 about the same parts you were shown but a

19 different question.

20 Let me know when you're ready.

21 Take your time.

22 A. I have that document.

23 Q. Okay. So what I want to do is

24 go to the page that you had discussed with

25 Mr. McWilliams earlier, which is page 4 of 7.

1 And in the -- in those two
2 paragraphs beneath the heading "EPA's
3 Investigation of Perfluorooctanyl Sulfonate,
4 PFOS, PFOA, and other Long-Chain PFAS."

5 Do you see that before you?

6 A. Yes, I do.

7 Q. Okay. And it goes on to say,
8 just for completeness -- I know this has been
9 read to you before. Let me just read it for
10 continuity sake, and then I'll have my
11 question about it.

12 It says, "In the late 1990s,
13 EPA received information indicating that
14 perfluorooctanyl sulfonate, PFOS, was
15 widespread in" --

16 I'm looking at my copy here.
17 Sorry if I'm not facing you. I don't mean
18 any disrespect?

19 -- "was widespread in the blood
20 of the general population and presented
21 concerns of persistence, bioaccumulation and
22 toxicity. Following discussions between EPA
23 and 3M, the manufacturer of PFOS, the company
24 terminated production of these chemicals."

25 Do you see where I'm reading

1 from?

2 A. I do.

3 Q. You would agree -- could you
4 just circle the word "the" where it says "the
5 manufacturer"?

6 Yeah, you would agree it
7 doesn't say one of the manufacturers of PFOS.
8 It says "the manufacturer of PFOS" in this
9 paragraph, right?

10 A. I see that in the section.

11 Q. Okay. Oh, and just to remind
12 our jurors -- could we just go quickly
13 back -- I'm sorry, I should have done this in
14 the first place -- quickly back to the first
15 page.

16 And you'll see, just to remind
17 our jurors, it says, "An official website of
18 the United States government."

19 Do you see that, sir?

20 A. Yes, I do.

21 Q. And beneath that it has the
22 official logo of the United States
23 Environmental Protection Agency.

24 Do you see that?

25 A. Yes, I do.

1 Q. And in the upper right hand in
2 smaller print, you can see it was printed out
3 on August 19, 2021. I don't know if it's in
4 this copy. Yeah, okay. It's on the left
5 side. I don't know why it's on the right
6 side on my copy.

7 So it was June 17, 2021.

8 A. Yeah, I see that.

9 Q. Okay. Not too long ago. Just
10 a couple of months ago, right?

11 A. Right.

12 Q. And so -- okay. So let's get
13 back to where I was at page 407.

14 And we talked about 3M being
15 characterized as the manufacturer of PFOS.

16 Do you recall we just looked at
17 that?

18 A. Yes.

19 Q. All right. And then the last
20 paragraph -- the last sentence of the
21 following paragraph you also read where it
22 said -- it begins, "Following."

23 "Following the voluntary
24 phaseout of PFOS by the principal worldwide
25 manufacturer, EPA took prompt regulatory

1 actions in 2002 and 2007 under the TSCA to
2 limit any future manufacture or importation
3 of 271 PFAS chemicals, essentially
4 encompassing all PFAS chemicals on the US
5 market."

6 Did I read that correctly?

7 A. Yes.

8 Q. And that would include,
9 obviously, PFOS, right?

10 A. Yeah, PFOS was included in --
11 in that SNUR, which is, I believe, what they
12 are referring to.

13 Q. Okay. So here's my question.

14 It says, "Following the
15 voluntary" -- and we'll get to that in a
16 second -- "phaseout of PFOS by the principal
17 worldwide manufacturer."

18 Joe, could you underline those
19 three words in red, please?

20 What's your understanding of
21 who is being referred to here as the
22 principal worldwide manufacturer?

23 A. So my understanding is that
24 that refers to 3M, which above was identified
25 as the manufacturer of PFOS.

1 Q. Okay. Do you know of any other
2 makers of PFOS who, quote/unquote,
3 voluntarily phased out PFOS in the early
4 2000s?

5 A. I guess I haven't investigated
6 that, but I'm not aware of any.

7 Q. Okay. Neither am I.
8 But and then following the
9 so-called voluntary phaseout, there were
10 severe restrictions placed on any future
11 manufacture or importation of PFOS; is that
12 right?

13 A. So that was the Significant New
14 Use Rule, which would require notice to the
15 EPA prior to manufacture, import of that
16 substance.

17 Q. And so -- and just so that's --
18 I don't think -- respectfully, I don't think
19 that was totally responsive, but I understand
20 what you're saying.

21 But there were restrictions to
22 limit any future manufacture or importation
23 of PFOS following the so-called voluntary
24 phaseout. Would you agree with that?

25 A. Yeah. The notification

1 requirement gives the opportunity to evaluate
2 whether that activity can proceed and put
3 controls in place, if necessary.

4 Q. Okay. And which resulted in a
5 significant, if not complete, reduction in
6 the manufacture and import of PFOS relative
7 to the -- let me just rephrase that. Let me
8 start that again. I lost my train of
9 thought.

10 So -- and that resulted in
11 significant, if not near complete, reduction
12 in the manufacture and import of PFOS
13 following the phaseout in the United States.

14 Would you agree with that?

15 A. I'm sorry. If I'm
16 understanding the question, the SNUR
17 resulted?

18 Q. Yeah. In a significant limit
19 of any future manufacture or importation of
20 PFOS.

21 A. Oh, so of future manufacture?
22 Yes, the SNUR -- the SNUR would apply to
23 future manufacture or importation of those
24 substances.

25 Q. And it resulted in a severe

1 limitation of future manufacture or
2 importation of PFOS, correct?

3 A. To my knowledge, yes, that
4 there -- if there haven't been Significant
5 New Use notices submitted for those
6 substances.

7 Q. Right. Okay. Very good.
8 (Gerber 30(b)(6) Exhibit DL1576
9 marked for identification.)

10 QUESTIONS BY MR. DOUGLAS:

11 Q. So you were asked by my
12 colleague -- can we just pull up there
13 DL1576?

14 I took a snapshot of your prior
15 testimony. I hope you don't mind.

16 You were asked by my colleague:
17 "What is your understanding of why
18 we're here today?"

19 And you said: "My
20 understanding is that I am representing
21 the company in this matter and speaking
22 to issues related to the company's
23 understanding of the Toxic Substances
24 Control Act in this matter and how it
25 carried out its obligations there."

1 Do you recall giving that
2 testimony?

3 A. Yes.

4 Q. Are you familiar -- I assume,
5 therefore, you're familiar with TSCA?

6 A. Yes, I am.

7 Q. Okay. And you -- and I think
8 you were asked this before, but there are
9 several -- there are many sections to it, not
10 just 8(e), right?

11 A. That's correct.

12 Q. And you were, in fact, asked
13 about Section 4 as well, right?

14 A. Yes.

15 Q. Of which you have knowledge,
16 right?

17 A. Yes.

18 Q. Okay. How many sections are
19 there? There's -- I think you were asked
20 about 4(f), maybe more, but how many off the
21 top of your head can you name?

22 A. It goes up at least through 21,
23 because I know the citizen petitions are
24 under Section 21. So I think there might be
25 a couple more after that.

1 Q. Okay. So you're pretty well
2 familiar with TSCA; would that be fair to
3 say? I guess that's why they picked you.

4 A. Yes.

5 Q. Okay. And so I take it you're
6 familiar with the Section 4(f)?

7 A. Yes.

8 Q. Okay. And what is your
9 understanding of what 4(f) is?

10 A. So Section 4(f) gives EPA the
11 authority to conclude that there may be
12 unreasonable risks to human health or the
13 environment associated with a substance and
14 then to take regulatory action to restrict
15 that substance under Section 6.

16 Q. Okay. What do you mean by
17 "take regulatory action to restrict that
18 substance"? Can you give -- can you give --
19 explain that our jurors, like what would such
20 action be.

21 A. Sure.

22 So Section 6 gives EPA
23 authority to regulate, manufacture, import,
24 process and use of substances, and there are
25 a range of actions the EPA can take under

1 that section to manage unreasonable risks.

2 Q. Okay. Do you know Thomas
3 DiPasquale?

4 A. Tom DiPasquale, yes.

5 Q. DiPasquale, okay, he is
6 pronounced.

7 And who is he?

8 A. He was an attorney at 3M.

9 Q. Okay. Have you read the
10 deposition he gave in the Minnesota case, by
11 any chance?

12 A. I can't recall off the top of
13 my head.

14 (Gerber 30(b)(6) Exhibit DL1577
15 marked for identification.)

16 QUESTIONS BY MR. DOUGLAS:

17 Q. Okay. So let me show you the
18 cover page to see if it refreshes your
19 recollection, but let's use DL1577 for that
20 purpose, please.

21 You'll see here it's -- it says
22 State of Minnesota, by its Attorney General,
23 Lori Swanson, yada-yada-yada, versus 3M.

24 Do you see where I'm referring
25 to?

1 A. Yes, I think I do remember this
2 one.

3 Q. Okay. So you did read it?

4 A. I believe so.

5 Q. Okay. And so just if we could
6 scroll down for the benefit of our jurors,
7 you'll see it says, "Confidential Videotaped
8 Deposition of Thomas DiPasquale, JD."

9 You know JD stands for juris
10 doctorate; in other words, he's a lawyer?

11 A. Yes.

12 Q. Okay. And it was taken just
13 short of four years ago, December 1, 2017.

14 Do you see that?

15 A. Yes.

16 And I'm sorry to interrupt. Do
17 I have this in my binders --

18 Q. No, you don't.

19 A. -- to -- hard copy? Okay.

20 Q. No, you don't. I'm just going
21 to read a passage from this and ask you if
22 you agree.

23 And if you go to page 155 --
24 and it's only going to be on your screen, so
25 I apologize for that.

1 A. I just -- I'm going to move --
2 sorry, move this window to a larger screen,
3 so I'll be looking to the side.

4 Q. Just let me know when you're
5 ready to go.

6 MR. WOODS: Gary, let me just
7 say, I mean, that's fine. If the
8 witness needs to read -- continue to
9 read the rest of the dep or a little
10 bit around that or something, I think
11 it's fair that he be allowed to do
12 that.

13 MR. DOUGLAS: Yeah, okay. And
14 I don't expect any issues. I think
15 he's going to agree, but...

16 QUESTIONS BY MR. DOUGLAS:

17 Q. You see where the question is
18 by the counsel for Minnesota? It says:

19 "Okay. Do you know what TSCA
20 4(f) is referring to generally? I know
21 this isn't your document.

22 "Answer: Yeah, the Toxic
23 Substances Control Act Section 4(f).

24 "Question. Okay.

25 "Answer: That's reference to

1 the part of the statute that gives EPA
2 authority to take remedial action when
3 it determines that a chemical is
4 present that presents significant risk,
5 and there's other statutory criteria.

6 "Question: Okay.

7 "Answer: I think the EPA has
8 only done that a handful of times in
9 its history."

10 A handful of times in its
11 history.

12 "There's other less restrictive
13 remedies that the EPA has."

14 Do you agree with that general
15 characterization of 4(f) as the attorney for
16 3M, Mr. DiPasquale, so attested?

17 A. Yes, I would agree Section 4(f)
18 gives EPA the authority to take action when
19 it determines that a chemical presents
20 significant risk.

21 Q. And it has only done so on very
22 few occasions because it's a very
23 complicated, long, drawn-out, expensive
24 procedure funded by taxpayers.

25 Would you agree with that?

1 A. My understanding, that it has
2 been infrequently used in the history of
3 TSCA.

4 Q. Okay. Sometimes it's just the
5 threat of using that that will get a chemical
6 company to voluntarily, so to speak, take
7 action to either remove a product or do
8 something to limit exposure.

9 Would you agree with that
10 generally?

11 A. I'm sorry, can you rephrase the
12 question?

13 Q. In light of this statement that
14 it's infrequently used, that's because just
15 the mere threat of a 4(f) remedial action
16 sometimes is impetus for chemical companies
17 to so-called voluntarily take their own
18 action before the EPA does and, say, remove
19 it from the market or limit exposure. Agree?

20 A. No, I don't think I agree with
21 that. I guess I can't speak for other
22 companies. I'm not aware of the Agency, you
23 know, threatening companies, to use those
24 words, with this authority.

25 Q. Well, considering maybe

1 "threatening" is too strong of a word for
2 you, but even when EPA is considering to take
3 action under 4(f), it can sometimes motivate
4 a chemical company to take so-called
5 voluntary action to remove and/or limit
6 exposure of the subject chemical, agree?

7 A. Yeah. Well, again, I'm not
8 sure I -- I agree with that because it -- it
9 seems to be, you know, a hypothetical; you
10 know, that the cases where we have
11 documentation that EPA has considered using
12 this authority, as you've described, are few.

13 Q. Yeah.

14 Okay. And I'm just saying that
15 the reason it's used is because the mere --
16 the mere threat or contemplation by EPA of
17 using such an action is enough to get
18 chemical companies to act before the EPA
19 does, so to speak?

20 A. I guess I can only speak to my
21 experience at 3M and the documentation that
22 I've reviewed related to this matter, but
23 that -- that does not seem to be the case in
24 my experience.

25 Q. Okay. So you're not aware that

1 the EPA had been contemplating 4(f) action
2 with respect to PFOS when 3M announced its
3 so-called voluntary phaseout of PFOS; is that
4 fair to say?

5 A. I was not directly involved in
6 those discussions. My understanding based on
7 the testimony that I've reviewed of
8 individuals that were involved in those
9 discussions is that that was not a factor in
10 the decision to phase out.

11 MR. DOUGLAS: Okay. But that's
12 not my question. I'll move to strike.

13 QUESTIONS BY MR. DOUGLAS:

14 Q. Are you aware that the EPA had
15 been contemplating 4(f) action in the weeks
16 and months right before 3M announced its PFOS
17 phaseout?

18 A. That's not my understanding
19 based on the documents I've reviewed.

20 Q. Okay. So maybe I can enlighten
21 you in that regard.

22 Let's, first of all, go --
23 you've heard of DuPont, obviously?

24 A. Yes, I have.

25 Q. Major competitor of 3M. Would

1 you characterize it that way?

2 A. A competitor, I guess, yeah. I
3 don't get into the business side of major
4 competitors and minor competitors.

5 Q. Okay. And we've had other
6 witnesses discuss this.

7 Are you familiar with Stephen
8 Korzeniowski, formerly of DuPont?

9 A. No, I don't think so.

10 Q. Well, I had the opportunity to
11 depose him and ask him some questions about
12 the 3M phaseout, and he -- and specifically
13 with regard to comments he memorialized in an
14 e-mail dated 7/15/2002. And so I'd like to
15 show you those comments, which is DL262.

16 MR. ROTTENBERG: That's
17 Tab 128.

18 (Gerber 30(b)(6) Exhibit DL262
19 marked for identification.)

20 QUESTIONS BY MR. DOUGLAS:

21 Q. And if we can pull up -- I'm
22 just going to look at the first page,
23 literally the first paragraph. Let me know
24 when you're ready.

25 And I would just -- I just --

1 I'm sure everybody is coming from the same
2 place. Everybody's getting anxious. We did
3 previously get permission to use this
4 document.

5 And it says, Stephen
6 Korzeniowski, DuPont, July 15, 2002. And
7 it's to a number of folks, all of which, if
8 you'll look, have a DuPont e-mail address.

9 Do you see that?

10 A. I do.

11 Q. Okay. And its subject is 3M
12 Re: FYI.

13 Do you see where I'm reading
14 from?

15 A. Yes, I do.

16 Q. And Mr. Korzeniowski goes on to
17 say, "I have said this many times, 3M knew
18 what was coming in the mid-'90s since they
19 had the data. They began their replacement
20 work at that time, as we can see from their
21 patents. They were clever enough to, quote,
22 'work,' end quote, a deal with the EPA and
23 appear" -- can you underline "appear" --
24 "appear to volunteer."

25 Do you see that? Do you see

1 where I'm reading from?

2 A. Yes, I do.

3 Q. Okay. So were you aware that
4 some of your colleagues and competitors and
5 other chemical companies viewed the so-called
6 voluntary phaseout of phaseout -- of 3M -- of
7 PFOS as just -- as a sharad -- you know, as a
8 charade -- sharad, where the hell did I get
9 that from? -- as a charade?

10 A. I don't recall reviewing this
11 document in my preparation, so, no.

12 Q. Well, I'm asking you as a
13 person who's here to talk about TSCA and
14 whether or not there was this looming threat
15 of EPA taking 4(f) action against EPA {sic}
16 when it announced its so-called volunteer
17 phaseout.

18 That's again my question.

19 A. And I'm sorry, can you repeat
20 the question?

21 Q. I'm asking you, as a person who
22 is here as a representative of 3M to talk
23 about TSCA, whether or not there was a
24 looming -- whether or not you're aware there
25 was a looming threat of EPA taking 4(f)

1 action against EPA -- again 3M, rather, when
2 it announced its so-called volunteer
3 phaseout. That's my question.

4 A. Yeah, so I was not directly
5 involved in those discussions. Based on my
6 review of the 3M documents related to that
7 discussion, that's not my understanding, that
8 the decision was made based on a looming
9 threat of 4(f) regulation by EPA.

10 Q. Oh, so now I'm confused because
11 you say you weren't involved in the
12 discussions, but yet you know what was
13 discussed.

14 So were you -- first of all,
15 what discussions are you talking about?

16 A. So I've reviewed -- you know,
17 I've reviewed documentation of discussion
18 with 3M personnel and Charlie Auer at EPA
19 regarding information that was being provided
20 to him and 3M's follow-up actions there.

21 I've reviewed the testimony, I
22 believe, of Mr. Weppner and Mr. Reich
23 regarding their discussions with the Agency.

24 And if I recall correctly, they
25 said that the -- the phaseout decision was

1 not based on the threat of regulation by EPA.

2 Q. That's what --

3 MR. MCWILLIAMS: Hey, Gary,
4 you're at 30 minutes.

5 MR. DOUGLAS: Okay. I've just
6 got like five minutes left.

7 QUESTIONS BY MR. DOUGLAS:

8 Q. So that's what they told you?

9 A. That's what I understand from
10 reviewing the testimony that's been provided.

11 Q. Okay. Well, and you know
12 Charles Auer is a paid 3M consultant. After
13 he left EPA, he became a highly paid 3M
14 consultant.

15 Are you aware of that?

16 A. I'm aware that he did do
17 consulting work for 3M. I don't know the
18 specifics of those arrangements.

19 (Gerber 30(b)(6) Exhibit DL393
20 marked for identification.)

21 QUESTIONS BY MR. DOUGLAS:

22 Q. Okay. Well, so now I'm
23 confused. Let's take a look at DL393. Get
24 through these real quick.

25 And you'll see this is an

1 e-mail -- I can get it. You'll probably
2 know. We can just flip it around. Yeah,
3 thanks.

4 It's an e-mail to a lot of
5 folks at 3M, and the subject is EPA says it
6 pressed 3M for action on Scotchgard chemical.

7 Do you see that?

8 A. I see that.

9 Q. And then if you go to the next
10 page, you'll actually see that it forwards a
11 New York Times article dated 5/19/2000,
12 which, if I'm not mistaken, is within days
13 after the phaseout announcement.

14 Do you see that, sir, the date,
15 5/19/2000, New York Times, page 3, column 1?

16 A. I do.

17 And I'm sorry, do we have a tab
18 number for this one?

19 MR. ROTTENBERG: Yeah, this
20 e-mail appears to be 163.

21 THE WITNESS: Okay. Sorry.
22 Just give me one second here.

23 All right. I have that.

24 QUESTIONS BY MR. DOUGLAS:

25 Q. Okay. And you can see -- I

1 just want to read to you --

2 A. Oh, I'm sorry. I'm sorry to
3 interrupt again. I'm not sure this is the
4 correct one. It has a different subject
5 line.

6 MR. ROTTENBERG: Can you remove
7 the Zoom?

8 MR. DOUGLAS: What are we
9 doing? My clock is ticking.

10 Everybody ready to proceed to
11 my question?

12 MR. ROTTENBERG: It's 140, Jon.
13 Sorry, it's not labeled in this.

14 THE WITNESS: 140. Okay.

15 MR. WOODS: I think those may
16 be copies of --

17 THE WITNESS: Yeah, that's the
18 article itself.

19 QUESTIONS BY MR. DOUGLAS:

20 Q. Okay. So well, let's -- it's
21 no different than the e-mail that was
22 provided.

23 So you'll see it says, "May 15,
24 2000, New York Times, Chicago, May 18th, the
25 Environmental Protection Agency said today

1 that it had pressed Minnesota Mining and
2 Manufacturing to come up with a solution
3 after the company's own tests had shown that
4 a chemical compound used in Scotchgard and an
5 array of household products could pose a risk
6 to human health and the environment."

7 Do you see that, sir?

8 A. I do.

9 Q. So were you aware of, sir, that
10 the EPA had been pressing 3M prior to its
11 so-called voluntary phaseout, just a week or
12 so before this article?

13 A. Yeah, I guess I'm not clear on
14 what it means that EPA had pressed 3M.

15 Q. Well, let's see if we can learn
16 some more from reading.

17 It says, "The EPA account
18 differs from that of 3M, which said on Monday
19 that it had voluntarily decided to" make the
20 chemical used in Scotchgard and many other
21 products -- "stop making the chemicals used
22 in Scotchgard and many other products by the
23 end of the year."

24 Do you see where I'm reading
25 from?

1 A. Yes, I do.

2 Q. And it says -- I guess to
3 deprive Mr. Woods the pleasure of having to
4 read this, it does say, however, that
5 "officials of 3M say they have no evidence
6 that the chemicals pose a long-term threat to
7 human health."

8 Do you see that? Do you see
9 where I'm reading from?

10 A. I'm sorry, I was on mute.

11 Yes, I do.

12 Q. Okay. And then the next
13 paragraph, just so we can be clear what they
14 meant by pressing, it says, "While the EPA
15 said it could not see an immediate safety
16 risk for consumers using products now on the
17 market, Agency officials said that if 3M had
18 not acted, they would have taken steps to
19 remove the product from the market."

20 Do you see that, sir?

21 A. I do.

22 Q. So you can see -- you had asked
23 me, I don't know what pressed means, but
24 clearly from this article, you can take it --
25 to take at face value, that the EPA had been

1 threatening to remove the product from the
2 market before it announced its voluntary
3 phaseout; fair to say?

4 Or were you not privy to this
5 information by folks at the company telling
6 you about their discussions with EPA?

7 A. You know, and again, in the
8 materials that I've reviewed based on -- from
9 the individuals that were involved in the
10 phaseout decision and the discussions with
11 the EPA, I have not seen a reference to
12 threats of EPA regulatory action.

13 Q. So you've not seen them, but
14 you don't have any concrete -- something you
15 can point to to say that that statement's not
16 true as you sit here right now; fair to say?

17 A. I was not involved in that
18 decision, so...

19 Q. And it goes on to quote, the
20 next line, the next page, "The results raised
21 a number of concerns, said Stephen
22 Johnson" --

23 I'll let you -- they're quoting
24 Stephen Johnson. Do you see that?

25 A. Yes, I do.

1 Q. Okay.

2 -- "who works in the Office of
3 Prevention, Pesticides and Toxic Substances
4 at the EPA. What it suggests to us is that
5 there are potentially long-term consequences,
6 but we don't have evidence to say it is
7 unsafe."

8 Now, Stephen Johnson went on to
9 become the head of the EPA for a number of
10 years, appointed by George W. Bush, former
11 president of the United States.

12 Did you know that?

13 A. Yes, I am aware of that.

14 Q. And did I read that paragraph
15 correctly?

16 A. Yes.

17 Q. Finally -- well, not finally.
18 Two more documents. Boy, time is ticking.

19 (Gerber 30(b)(6) Exhibit DL1558
20 marked for identification.)

21 QUESTIONS BY MR. DOUGLAS:

22 Q. Let's go to DL1558. And you'll
23 see this is a 3M-produced document. That's
24 what that means, 3M_AFFF, and then there's a
25 Bates number.

1 Do you see that?

2 MR. ROTTENBERG: 69. Tab 69,

3 Jon.

4 THE WITNESS: All right. I

5 have that document.

6 QUESTIONS BY MR. DOUGLAS:

7 Q. Okay. And I just want to go to

8 Bates ending 878, please.

9 I think this was amongst the
10 documents that was just recently produced,
11 just for the record.

12 So the Bates ending 878, and
13 there's a timeline. And go to the
14 April 24-25th entry and blow that up, please,
15 Joe.

16 And you'll see it says, "In
17 talks with" -- April 24-28, 2000, so that
18 would be about a month before the phaseout
19 announcement, correct?

20 A. I believe that's correct.

21 Q. And it says, "In talks with 3M,
22 the EPA stated that it was considering
23 whether to investigate PFOS under TSCA 4(f)."

24 Do you see that?

25 A. Just -- can you -- I'm sorry,

1 can you give me the Bates number of the page?

2 MR. ROTTENBERG: 878.

3 QUESTIONS BY MR. DOUGLAS:

4 Q. It ends in 878.

5 A. 878. Sorry, it's a lengthy
6 one.

7 Q. I'm only reading this sentence
8 to you. You don't need to read anything else
9 on redirect.

10 A. Yes, I see that.

11 Q. Okay. Were you privy to these
12 discussions between 3M and EPA where EPA
13 stated it was considering whether to
14 investigate PFOS under TSCA 4(f)?

15 A. I was not.

16 (Gerber 30(b)(6) Exhibit BB221
17 marked for identification.)

18 QUESTIONS BY MR. DOUGLAS:

19 Q. Okay. Let's move on to the
20 next document, BB221, and you'll see these
21 are handwritten notes. We've had previous
22 testimony that these notes were drafted by
23 Bill Weppner.

24 Do you know who Bill Weppner
25 is?

1 A. Yes, I do.

2 Q. Okay. And who is he?

3 A. He was the former director of
4 regulatory affairs, I believe.

5 Q. So he's --

6 A. Might not have gotten his title
7 exactly correct.

8 Q. Okay. But he's a person that
9 would be meeting with EPA on regulatory
10 issues; fair to say?

11 A. My understanding is he was
12 involved in -- in those discussions.

13 Q. Okay. And just in the middle
14 of the page, if we blow it up, it says, "Jim
15 Aidala, associate administrator of Pesticides
16 and Toxics Program."

17 Are you familiar with Jim
18 Aidala from EPA?

19 A. I am familiar with the name.

20 MR. ROTTENBERG: Jon, it's

21 Tab 132.

22 QUESTIONS BY MR. DOUGLAS:

23 Q. It will be a two-page document.

24 MR. MCWILLIAMS: Gary, look at
25 your phone.

1 MR. DOUGLAS: What's that?

2 MR. MCWILLIAMS: I said, look
3 at your phone.

4 MR. DOUGLAS: I don't know
5 where it is, so I can't look at it.

6 QUESTIONS BY MR. DOUGLAS:

7 Q. Gotcha. So let's go to the
8 second page, and it's dated 5/8/2000.

9 Do you see that?

10 A. Yes.

11 Q. Okay. And so that would
12 literally be within days prior to the
13 so-called voluntary phaseout, right?

14 A. Yes.

15 Q. And it says, "Sussman meeting
16 with Jim Aidala," Aidala of the EPA, but do
17 you know who Sussman is?

18 A. If I remember correctly, he
19 is -- he was an attorney at the law firm
20 Latham & Watkins.

21 Q. Yes.

22 And it says, Sussman, the
23 attorney, met with J.A. Aidala at his office
24 in Latham & Watkins. "Aidala had just been
25 made aware of this last week. Concerned over

1 staff slowness in response to this issue.
2 Very sensitive to the use of 4(f), he agrees
3 that this appears to meet the requirements of
4 4(f)."

5 Do you see that?

6 A. I do.

7 Q. Okay. So this is all on the
8 heels, just prior to the announcement of the
9 voluntary phaseout, right?

10 A. Yes.

11 Q. And so were you privy to this
12 information, that there was this discussion
13 between counsel for 3M and officials at EPA
14 where apparently EPA felt that the --
15 appeared to meet -- PFOS appeared to meet the
16 requirements of 4(f)?

17 A. I've reviewed this summary of
18 the discussion, and I was not involved
19 myself.

20 Q. Okay. But you can see that a
21 discussion of potential 4(f) action was
22 being -- was taking place, according to these
23 documents, just prior to the so-called
24 voluntary phaseout, right?

25 A. I see Section 4(f) mentioned

1 there. I would say I'm not -- I'm not clear
2 what it means that EPA is sensitive to the
3 use of 4(f).

4 Q. Well, how about he agrees that
5 it appears to meet the requirements of 4(f).

6 Do you have -- any ambiguity
7 there for you?

8 A. No, that seems to be clear.

9 Q. Okay. And then in exchange for
10 not taking this action, 4(f) action, 3M then
11 agreed to so-called voluntarily withdraw PFOS
12 and perfluorooctanyl substances right on the
13 heels of this discussion, correct?

14 A. And again, I was not involved
15 in those discussions. I have reviewed
16 testimony from others that were involved
17 that -- that take a contrary view, that that
18 was not the driving view.

19 Q. I'm not taking about testimony
20 after someone is sued. I'm talking about
21 notes that were taken before any lawsuit was
22 contemplated.

23 MR. DOUGLAS: So I'll move to
24 strike that as unresponsive.

25

1 QUESTIONS BY MR. DOUGLAS:

2 Q. But sometimes -- you know, the
3 company expression the Sword of Damocles?
4 Have you ever heard that?

5 A. I've heard that expression.

6 Q. Okay. And so really, I mean,
7 just, you know, it's common sense. It's
8 clear that the only reason 3M voluntarily,
9 so-called, withdrew is because they had the
10 Sword of Damocles hanging over their heads,
11 the concern that EPA might take action
12 against them and force them to stop
13 manufacturing PFOS; isn't that right?

14 I mean, there's the
15 circumstances. It's clear as a bell to me.

16 A. That's -- that's not consistent
17 with my understanding based on the documents
18 that I've reviewed. I do recall other -- a
19 presentation or a meeting summary that
20 recognized EPA's authority under this section
21 of TSCA but concluded that that outcome was
22 unlikely.

23 MR. DOUGLAS: Yeah, move to
24 strike.

25

1 QUESTIONS BY MR. DOUGLAS:

2 Q. But you can see that there was
3 a vigorous discussion taking place and a very
4 real possibility expressed by EPA that PFOS
5 met the requirements of 4(a) {sic}. That is
6 the context under which -- during which time
7 the company withdrew -- would voluntarily,
8 so-called -- withdrew manufacture of
9 perfluorooctanyl chemistries, including PFOS
10 at the time, correct?

11 A. You know, I see recorded here
12 in the minutes that Mr. Aidala agreed that
13 this situation appeared to meet the 4(f)
14 criteria. Beyond that, you know, I can't
15 speak to EPA's thinking.

16 Q. Okay. I'm just trying to put
17 context to our jurors so they understand the
18 context in which 3M then, within days,
19 voluntarily, so-called, announced a phaseout.

20 You appreciate -- you
21 appreciate the context?

22 A. I'm sorry, can you rephrase the
23 question?

24 Q. Can you appreciate that this is
25 part of the context, the circumstances that

1 were taking place right at the time that 3M
2 announced its phaseout?

3 A. I -- I recognize that this is a
4 report of 3M discussions with EPA officials
5 shortly -- shortly before the announcement of
6 the voluntary phaseout.

7 Q. Better to phase it out than to
8 be sued by -- sued by the EPA to force you to
9 phase it out.

10 Would you agree with that?

11 A. No, I disagree with that
12 characterization.

13 Q. That's something our jurors can
14 figure out for themselves.

15 (Gerber 30(b)(6) Exhibit DL49
16 marked for identification.)

17 QUESTIONS BY MR. DOUGLAS:

18 Q. In any event, DL49, this is the
19 official press release announcing the
20 phaseout. And they phased out, if you'll --
21 if you want to read this -- I'm just trying
22 to save some time.

23 They announced that -- the
24 phaseout of all perfluorooctanyl chemistries.

25 Is that your understanding?

1 If we could blow up that first
2 paragraph, St. Paul, Minnesota, May 16th.

3 MR. ROTTENBERG: Tab 11, Jon.

4 QUESTIONS BY MR. DOUGLAS:

5 Q. Do you see where it says that?

6 A. Sorry, yes, I see that
7 statement.

8 Q. Okay. Perfluorooctanyl
9 chemistries, the oct means eight carbons.

10 You've got some chemical
11 background. I'm sure you know that, right?

12 A. That's correct.

13 Q. Okay. Perfluorooctanyl
14 chemistries would conclude -- would include
15 PFOS, PFOA and their precursors; fair to say?

16 A. I'm sorry, can you repeat your
17 question?

18 Q. Perfluorooctanyl chemistries
19 would include, therefore, PFOA and PFOS
20 and/or their precursors; fair to say?

21 A. So PFOS, PFOA would be included
22 in perfluorooctanyl chemistry.

23 Q. And you're aware that there
24 were other companies that made, after the
25 phaseout, made PFOA for use in things like

1 fire foam and other products.

2 Is that fair to say?

3 A. I'm not familiar with, you
4 know, the other companies' production of
5 those substances. I didn't prepare for that.

6 Q. Okay. But and one of the
7 stated reasons for getting out of the
8 perfluorooctanyl business is because the
9 company expressed that it was in the public
10 interest to do so.

11 If you go a little further
12 down, last paragraph -- last sentence of the
13 first full big paragraph.

14 "While this chemistry has been
15 used effectively for more than 40 years,
16 principles of responsible environment
17 management."

18 Do you see that?

19 "And the phaseout is based on
20 principles of responsible environmental
21 management."

22 A. Yes, I see that.

23 Q. Anybody that used
24 perfluorooctanyl chemistries after that would
25 therefore be acting irresponsibly with

1 respect to environmental management; the
2 opposite would be true.

3 Would you agree with that?

4 A. I'd say that's -- that's
5 outside of my area of expertise to speak to
6 the risks of other companies' activities.

7 (Gerber 30(b)(6) Exhibit DL1566
8 marked for identification.)

9 QUESTIONS BY MR. DOUGLAS:

10 Q. Let's shoot up a few more
11 months, and this, I promise, is the last
12 document. My colleagues are going to kill me
13 for wasting all this time.

14 August 21st, this is DL1566.

15 MR. ROTTENBERG: Tab 164.

16 QUESTIONS BY MR. DOUGLAS:

17 Q. And it says -- it's a letter
18 from 3M to Mr. Jesse Baskerville of the
19 Toxics and Pesticides Enforcement Division,
20 US EPA.

21 Do you see that?

22 A. Yes.

23 Q. And it says, "Regarding 3M TSCA
24 Section 8(e) compliance audit disclosure of
25 phase I findings pursuant to incentives for

1 self-policing, discovery, disclosure and
2 correction and prevention of violations," and
3 then it mentions the federal regulation at
4 issue.

5 Do you see that?

6 A. Yes.

7 Q. If you go to the first
8 paragraph, "Dear Mr. Baskerville," of the
9 EPA, "Pursuant to our recent conversations
10 with Gerry Stubbs and others from your staff,
11 3M is writing to disclose potential
12 violations of TSCA 8(e) substantial risk
13 reporting requirements pursuant to EPA's
14 self-audit policy."

15 Do you see that?

16 A. Yes.

17 Q. Okay. What I want to draw your
18 attention to is the next page, and it talks
19 about phase I of this program. And it goes
20 on to say, "3M completed the first phase of
21 the audit on July 31, 2000."

22 Do you see that?

23 A. Yes.

24 Q. And it goes on to say, "which
25 included the FYI submissions on various forms

1 of perfluorooctane sulfonate, PFOS."

2 Can you underline PFOS?

3 A. Yes.

4 Q. "On 11 compounds" -- "and on 11
5 compounds related to PFOS and on
6 perfluorooctanoic acid, PFOA."

7 Do you see that?

8 A. Yes, I do.

9 Q. "From the over 600 studies or
10 pieces of information in these FYI
11 submissions, 3M identified 30 studies that
12 appear potentially to meet EPA's current TSCA
13 Section 8(e) reporting criteria."

14 Do you see that?

15 A. Yes.

16 Q. I'm just going to try to cut
17 some time down.

18 A. Yes.

19 Q. So at this time there was 600
20 new submissions or pieces of information in
21 2000 regarding PFOS, according to this
22 document, right?

23 A. Yeah, in part. And I
24 understand there were other phases of the
25 audit, and there was additional information

1 in that (AR)-226 docket, so I don't know if
2 600 is the total number.

3 Q. But there was more?

4 A. So there were additional phases
5 of the audit that covered additional
6 information.

7 Q. So my point is that -- and this
8 is where I'll wrap up this.

9 My point is, it was in this
10 year 2000 is the first time 3M disclosed
11 hundreds and hundreds of studies, documents
12 and other information regarding PFOS; fair to
13 say? That's what it says here.

14 A. So those pieces of information
15 had been provided to EPA in an FYI submission
16 prior to that, and then the audit was
17 evaluating any of those studies --

18 Q. When was that FYI?

19 A. I'd have to go back and
20 double-check. It might have been -- I know
21 it was at Charlie Auer's request.

22 Q. Right.

23 A. I'd have to go back and
24 double-check the dates on that.

25 Q. But around that time?

1 A. Around -- yeah, within a couple
2 years of this time, I think.

3 Q. Okay. And nonetheless, 3M had
4 been studying PFOS and related compounds
5 since the '50s and '60s and found effects in
6 laboratory animals.

7 Were you aware of that?

8 A. I don't recall the dates of the
9 earliest acute tox studies.

10 MR. DOUGLAS: Those are all the
11 questions. I will reserve whatever
12 remaining time and, at your mercy,
13 some additional time, if necessary,
14 for our recross.

15 Want to take a break, Craig?

16 MR. WOODS: Yeah, why don't we
17 take five minutes here.

18 THE WITNESS: I'm sorry, I
19 think I -- I accidentally --

20 VIDEOGRAPHER: The time is --
21 the time is 5:12 p.m. We're off the
22 record.

23 (Off the record at 5:12 p.m.)

24 VIDEOGRAPHER: The time is
25 5:27 p.m. We are back on the record.

1 MR. MCWILLIAMS: Craig, before
2 we get started, I just want to make
3 sure all objections are still
4 preserved for my side as well?

5 MR. WOODS: That's fine.

6 MR. MCWILLIAMS: Thanks.

7 CROSS-EXAMINATION

8 QUESTIONS BY MR. WOODS:

9 Q. All right. Jon, I have a few
10 questions for you. I'm going to be skipping
11 around a little bit, so it might take me a
12 little bit of time to pull up a document or
13 something like that, but hopefully you'll
14 indulge me a little bit.

15 I want to start by asking you
16 about the TSCA reporting decisions in the
17 late 1970s and early 1980s.

18 Do you recall you were shown a
19 number of memos regarding reviews that a 3M
20 fluorochemical technical committee conducted
21 relating to information about fluorochemicals
22 in blood and the toxicology tests that had
23 been performed up until that time on organic
24 fluorine compounds such as PFOA and PFOS? Do
25 you recall that?

1 A. Yes.

2 Q. And I think you said that based
3 on the review of that material, the 3M
4 fluorochemical technical committee felt that
5 the information was not reportable under TSCA
6 8(e).

7 Do you recall that?

8 A. That's my understanding from
9 the review of those documents.

10 Q. Yeah.

11 What's your understanding why
12 the 3M fluorochemical technical committee
13 came to that conclusion at that time?

14 A. What I recall seeing in those
15 deliberations is that 3M had information
16 about employee exposure to those substances
17 and blood levels in the employees who were
18 directly exposed to fluorochemicals, and that
19 no adverse effects had been seen in those
20 employees related to their exposure.

21 Thus, the lack of adverse
22 effects was a key determinant in the
23 reporting decision.

24 Q. And in terms of your
25 understanding of 3M's obligations to report

1 under 8(e) in that time period based on the
2 guidance that EPA had provided, is that
3 decision consistent with your understanding
4 of 3M's obligations at that time?

5 A. I have -- based on my review of
6 the documents, 3M was aware of EPA's guidance
7 at the time and that that -- belief that that
8 was consistent with the Agency's guidance,
9 that exposure without an observed adverse
10 effect was not reportable, substantial risk
11 information.

12 Q. Well, you were shown some
13 documents by Mr. McWilliams that talked about
14 the fact that 3M {sic} was toxic, and in some
15 of the animal studies there were reported the
16 toxic effects.

17 Why would that not trigger a
18 reporting event under TSCA under the 8(e)
19 requirement?

20 A. And those results would have
21 been evaluated based on the guidance
22 available at the time. You know, my
23 understanding is that those -- those -- some
24 of those study results were range finder
25 studies where deaths may be expected as

1 you're dialing into correct dose ranges. A
2 toxicologist could probably speak better to
3 that than I could.

4 But on top of that, 3M still
5 had the information on its directly exposed
6 workers where no adverse effects had been
7 seen at concentrations that were relevant to
8 human exposure.

9 Q. So in terms of drawing -- or
10 concluding not to report, did 3M consider the
11 fact that at concentrations relevant to human
12 exposure, they did not see adverse effects?

13 A. That's my understanding based
14 on the review of the documents, that that was
15 the reason for the committee's decision, was
16 the lack of observed adverse effects in its
17 workers.

18 Q. And is considering the exposure
19 level one of the considerations that you can
20 make in terms of determining whether to
21 report information to EPA under TSCA 8(e)?

22 A. It can be, based on EPA's
23 guidance. So, for example, substances
24 falling into the moderate toxicity category,
25 EPA would allow for the consideration of the

1 degree of exposure. Substances that would
2 fall into like a low -- a low toxicity
3 category are not reportable, regardless of
4 exposure.

5 Q. And in terms of PFOS, do you
6 have an understanding of where on the
7 toxicity continuum it fell, based on the
8 studies that were done at that time on --
9 acute studies that were done on PFOS at that
10 time?

11 A. Based on my review of the
12 documents, I do recall seeing acute toxicity
13 studies where PFOS was classified as
14 moderately toxic.

15 I would defer to my colleagues
16 in toxicology for more interpretation of
17 those studies.

18 Q. And in terms of characterizing
19 PFOS as moderately toxic, under those
20 circumstances and the guidance that EPA
21 provided in determining whether to report
22 information to EPA on studies that were
23 performed, you could take into consideration
24 the exposure potential to that material,
25 correct?

1 A. So EPA's guidance does allow
2 for exposure to tox -- I'm sorry, exposure
3 potential in the moderate acute toxicity
4 category.

5 Q. And in fact, that's what 3M did
6 in determining whether to report these
7 studies back in the '70s. They did consider
8 the exposure potential, right?

9 A. I -- you know, I wasn't
10 involved in those discussions, but based on
11 my review of the documents, that -- that was
12 the -- a consideration, was the degree of
13 exposure and, again, looking to that employee
14 exposure data.

15 Q. You were also provided -- or
16 you reviewed some information about specific
17 studies where a certain number of rats died
18 in those studies and a certain number of
19 monkeys died in those studies.

20 Do you recall that?

21 A. Yes.

22 Q. Does the death of rats or
23 monkeys automatically trigger a duty to
24 report those studies to EPA under EPA
25 guidance?

1 A. Again, EPA has issued guidance
2 on, you know, degree of toxicity and when
3 lethality -- whether exposure should be
4 considered at various levels of lethality.
5 So there are categories where EPA does allow
6 for the consideration of exposure.

7 Q. And that would include
8 substances that are only moderately toxic,
9 correct?

10 A. That includes the moderate
11 acute toxicity category.

12 Q. All right. Okay. I want to
13 ask you a couple of questions about the ITC
14 submission that 3M made with respect to POFS
15 chemistries.

16 Do you recall those questions?

17 A. Yes.

18 Q. Okay. And I'm going to ask --
19 I'm going to mark, if I can, as the next
20 exhibit -- I'll give a reference to the date
21 to the videographer to pull this one up and
22 put it in the exhibit binder. This will be
23 3M 3.

24 (Gerber 30(b)(6) Exhibit 3M 3
25 marked for identification.)

1 QUESTIONS BY MR. WOODS:

2 Q. Hang on one second. I got to
3 get this one.

4 Just give me one second here.
5 I need to find the document.

6 Okay. And I'm -- this is a
7 memo that I'm going to mark as 3M 3. It's
8 from April 22, 1982. I think the file is
9 1982422. If we could pull that document up.

10 And -- yeah, perfect. Okay.
11 Great.

12 And let me ask you this, Jon.
13 What we put on the screen as Exhibit
14 Number 3M 3 is an April 22, 1982 memo. It
15 says, "Field letter of W.H. Pearlson." And
16 it's Minnesota Mining and Manufacturing
17 Company at the top, Bates number 2174809
18 through 2174810.

19 Is this a document that you
20 reviewed as part of educating yourself on
21 3M's response to the ITC request for
22 information on POSF?

23 A. Yes, it is.

24 And do you happen to have the
25 tab number for that one?

1 Q. Okay.

2 A. Sorry.

3 Q. I don't. I don't know if we
4 have a tab number for that. We may have to
5 just pull it up from the exhibit folder.

6 Here it is. It's in there,
7 3M 3.

8 MR. ROTTENBERG: And it is
9 Tab 59, Jon.

10 THE WITNESS: Okay. Thank you.
11 I've got it.

12 QUESTIONS BY MR. WOODS:

13 Q. Okay. And this is a -- well,
14 can you describe your understanding of what
15 this memo is once you pull it?

16 A. Yeah. So my understanding is
17 that this is, you know, a report after
18 Mr. Pearlson had attended a meeting with -- a
19 public meeting for the Interagency Testing
20 Committee request. So it was an open meeting
21 to understand the requirements and what ITC
22 was looking for in its request.

23 Q. Okay. And did members -- or
24 people from 3M attend this meeting?

25 A. Yes, that's my understanding.

1 Q. Okay. And I want to direct
2 your attention to the second page of this
3 document, and the second paragraph, the
4 first -- the first full sentence there.

5 It says, "After the formal
6 meeting was adjourned, about 10:30 {sic}, I
7 went up and spoke to several members to
8 determine more precisely the basis for
9 selection of perfluorooctanesulfonyl
10 fluoride."

11 Do you see that?

12 A. Yes.

13 Q. So this is indicating that the
14 3M representative went up and talked to
15 several members of the committee regarding
16 POSF, right?

17 A. Yes, that's my understanding.

18 Q. Yeah.

19 And the 3M employee was told in
20 the next sentence, "I was assured from
21 several directions that the selection was
22 based solely on production volume."

23 Do you see that?

24 A. I see that.

25 Q. And then if you can look down

1 at the last sentence, it says, "Specifically,
2 they were not concerned with the previous
3 8(e) announcement, although several were
4 aware of it."

5 Do you see that?

6 A. I do.

7 Q. Do you know what that refers
8 to?

9 A. My understanding is that's a
10 TSCA 8(e) submission related to teratology
11 study results on PFOS and other substances.

12 Q. So this 8(e) announcement or
13 submission is a submission that 3M made to
14 EPA under Section 8(e) relating to PFOS; is
15 that right?

16 A. That's my understanding, yes.

17 Q. And it was based on certain
18 studies that 3M conducted on PFOS.

19 Is that your understanding?

20 A. Yes, it is.

21 Q. We can take that document down.

22 So what, if anything, does
23 that -- well, first of all, does it indicate
24 that the committee was aware of 3M's
25 submission on PFOS to EPA?

1 A. So I read here that members of
2 the committee, several of the members of the
3 committee, were aware of 3M's 8(e)
4 submission, the teratology study results on
5 PFOS.

6 Q. And does this indicate at all
7 whether the committee was interested in
8 receiving information about that submission?

9 A. What I read as being recorded
10 here is that, you know, that report was not
11 of concern to the members of the committee
12 that Mr. Pearlson spoke with and that POSF
13 has been selected on the basis of its
14 production volume.

15 (Gerber 30(b)(6) Exhibit 3M 4
16 marked for identification.)

17 QUESTIONS BY MR. WOODS:

18 Q. Okay. If we could mark as the
19 next exhibit, which would be 3M 4, a memo
20 from 1980. It will be a November 19, 1980.

21 This will also be in the
22 exhibit window once he gets it transferred
23 over.

24 And while we're getting it
25 transferred over, I'll just represent this is

1 a three-page document dated November 19,
2 1980, Bates number 1296821 through 1296823.

3 Do you have that document up
4 there?

5 A. I have it on my other screen
6 here.

7 Q. Okay. And could you just
8 indicate -- is this -- well, first, is this a
9 document that you reviewed in connection with
10 your preparation to speak on behalf of the
11 company here today?

12 A. Yes, it is.

13 Q. And what is this document?

14 A. This is a TSCA 8(e) submission
15 on study results on the potassium salt of
16 perfluoroalkyl sulfonates, and this is
17 preliminary information from a teratology
18 study in rats.

19 Q. Okay. And if you go down to
20 the second -- or last paragraph on this page,
21 it says, "As noted on page 584 of an article
22 published in the October 1980 American
23 Industrial Hygiene Journal entitled 'Health
24 Status of Plant Workers Exposed to
25 Fluorochemicals - A Preliminary Report.'"

1 Do you see that?

2 A. I see that.

3 Q. And it says, "This publication
4 and the attached information reflect, in
5 part, 3M's testing and monitoring program
6 designed to evaluate the overall impact of
7 exposure of fluorochemicals to the health of
8 workers."

9 Do you see that?

10 A. Yes.

11 Q. And do you have an
12 understanding as to what this publication
13 was?

14 A. My understanding is that this
15 is 3M's published data on the blood levels of
16 organic fluorine in its workers exposed to
17 fluorochemicals during the manufacturing
18 process.

19 Q. Okay. And do you have an
20 understanding that this article was published
21 in the open scientific literature in 1980?

22 A. Yes, that's my understanding.

23 Q. And was this information
24 provided to EPA under the TSCA 8(e)
25 submission?

1 A. Certainly as part of this
2 submission, yes.

3 Q. And based on 3M's 8(e)
4 submission, what did the data reflected in
5 that 1980 publication indicate in terms of
6 health effects?

7 A. At that time, no adverse health
8 effects had been identified associated with
9 the levels of exposure in 3M employees.

10 (Gerber 30(b)(6) Exhibit 3M 5
11 marked for identification.)

12 QUESTIONS BY MR. WOODS:

13 Q. And I'm going to -- we can put
14 that document down. I'm going to mark as the
15 next exhibit, 3M 5, an August 1980 -- 1980, I
16 think, dash 9 article. When you get that, if
17 you can put that on the screen, that will be
18 3M 5.

19 Okay. And once you pull that
20 document up, Jon, let me know.

21 A. All right. I have that.

22 Q. And this is a August 1980
23 publication. First author on the publication
24 is Ubel, and it's entitled, "Health Status of
25 Plant Workers Exposed to Fluorochemicals - A

1 Preliminary Report."

2 Does this document appear to be
3 the study that was referenced in 3M 5 -- I'm
4 sorry, 3M 4, which was the TSCA 8(e)
5 submission on PFOS?

6 A. I believe that's correct.

7 Q. Okay. And this was information
8 that 3M provided to EPA; is that right?

9 A. Yes, this information is
10 referenced in the TSCA 8(e) submission that
11 we just reviewed.

12 Q. Okay. All right. If we could
13 go down to the -- I think it's the fourth
14 paragraph in the first column, I'm going to
15 ask you about the last sentence of that
16 paragraph where it says, "Perfluorooctanoic
17 acid or a similar compound of industrial
18 origin was believed to be present in a human
19 plasma fluorine fraction isolated from a
20 large pool of human plasma samples."

21 Do you see that?

22 A. I do.

23 Q. And then it cites a reference
24 number 6.

25 Do you see that?

1 A. Yes.

2 Q. Okay. And if we could --

3 MR. DOUGLAS: Sorry to
4 interrupt. I sincerely apologize. I
5 lost my realtime, and I'm trying to
6 pull -- what is the exhibit number on
7 this? I just wanted to print it out
8 right now. Sorry.

9 MR. WOODS: Yeah, this is 3M 5.

10 MR. DOUGLAS: Thank you.

11 QUESTIONS BY MR. WOODS:

12 Q. All right. And if we could go
13 to the last page under References, number 6,
14 where it says Guy, W.S., D.R. Taves, and
15 W.S. Brey.

16 Do you see that?

17 A. I do.

18 Q. And do you know what that
19 publication is?

20 A. Yes, I believe I do.

21 Q. What is that publication?

22 A. That's another journal article
23 describing the results that Guy and Taves
24 discovered of organic fluorine in pooled
25 blood samples.

1 Q. And that's the study that we've
2 been talking about over the course of your
3 deposition that was published in the
4 literature relating to their findings of
5 organic fluorine in general population pooled
6 blood samples, correct?

7 A. Yes.

8 Q. And was the information
9 regarding that study provided to EPA under
10 TSCA?

11 A. By reference, yes, this study
12 was referenced in 3M's 8(e) submission, and
13 this study, in turn, references the Guy and
14 Taves study.

15 Q. Can we pull up, if we can,
16 DL1424? I'm sorry, DL1428. I think it was
17 an exhibit that was already used earlier
18 today. And that's Tab 160 in your binder,
19 Jon.

20 And I think we've already
21 discussed, this document is a summary that
22 was prepared by consultants for EPA -- or for
23 the ITC relating to the information they
24 gathered on POSF for purposes of the ITC
25 review; is that correct?

1 A. That's my understanding, yes.

2 Q. Okay. And can we go over to
3 page -- can we go over to page 2 of the
4 document? This will be at the bottom of the
5 page. It says page 2. I don't know, it
6 could be like the fifth or sixth actual page
7 of the document.

8 A. Okay. I have that.

9 Q. And at the bottom under Use, do
10 you see that?

11 It says that "3M reported that
12 POSF is a chemical intermediate used in the
13 manufacture of 3M's fabric treatment and
14 surfactant fluorochemical lines."

15 Do you see that?

16 A. Yes.

17 Q. So what does this tell -- or
18 does this indicate that the Agency was aware
19 of the use of this chemical in consumer and
20 industrial products?

21 A. I believe so, yes.

22 Based on my review, POSF
23 specifically is described as a chemical
24 intermediate, and it's used in the
25 manufacture of downstream products. And the

1 uses of those products, in turn, are
2 described in this section.

3 Q. And the next sentence it says,
4 "Perfluorinated organic compounds are
5 important industrial surfactants, textile
6 treatment agents, surfactant intermediates,
7 and oil and water-repellent lubricants."

8 A. Yes.

9 Q. And on page 6 of the document?

10 A. I have it.

11 Q. Under point 4 it says, "The
12 fluorine in POSF will inhibit
13 biodegradation."

14 Do you see that?

15 A. Yes, I do.

16 Q. It says, "Therefore,
17 biodegradation of POSF should occur slowly in
18 the environment."

19 Do you see that?

20 A. Yes, I do.

21 Q. And then under Summary, under
22 point 6 there, the middle of the page, it
23 says, "POSF is expected to partition to
24 water, soil and sediment, where it will
25 slowly hydrolyze and biodegrade."

1 A. Yes, I see that.

2 Q. And what does this summary tell
3 you about ITC's knowledge of the degradation
4 of POSF-based products?

5 A. Based on my review of the
6 documents, you know, the contractor that
7 prepared this document understood the slow
8 biodegradation of POSF. The hydrolysis
9 pathway to POSF was also recognized.

10 Q. And 3M also provided the Agency
11 information relating to -- that it had on
12 POFS; is that right?

13 A. Yes, there were -- there was
14 additional information provided on FC-95, or
15 PFOS.

16 Q. And that information that they
17 provided included toxicity information
18 relating to the compound, correct?

19 A. That's my understanding,
20 correct.

21 Q. You can take that document
22 down.

23 I want to go back to -- let's
24 see. I've got to find -- this was marked as
25 an exhibit. I don't -- I didn't -- I don't

1 have written down what it is, but I can -- I
2 think it's also in the materials we provided
3 to the court reporter.

4 This is a 1982, February 25th,
5 Federal Register notice relating to the ITC
6 review of POSF.

7 If we could -- I don't know
8 what document you have. I'll go ahead and
9 just mark this as 3M 6 so that -- since I
10 don't have the other exhibit number handy.

11 MR. MCWILLIAMS: It was already
12 marked as DL1554, Craig.

13 MR. WOODS: Okay. That's fine.
14 Then we'll just keep it that, DL1554.

15 QUESTIONS BY MR. WOODS:

16 Q. And you were asked some
17 questions about this notice relating to
18 requesting information on POSF, correct?

19 A. Yes.

20 Q. Yeah.

21 This was actually the
22 information relating on ITC's review of a
23 number of substances, right?

24 A. That's my understanding, yes.

25 Q. And in the bottom right-hand

1 corner of this document, they have listed a
2 number of considerations that the Agency was
3 wanting to consider; is that right?

4 A. Yes, that's correct.

5 Q. You were asked about some of
6 these -- some of the information here, and
7 you were asked some questions about whether
8 POSF was similar to PFOS.

9 Do you recall that?

10 A. Yes.

11 Q. Yeah.

12 One of the criteria here of
13 these factors for consideration is number 5.
14 It says, "Similarity in chemical structure to
15 other known" -- "to other substances which
16 are known to present an unreasonable risk of
17 injury to health or the environment."

18 Do you see that?

19 A. I do.

20 Q. And is this standard that
21 they're talking about here, substances that
22 are known to prevent an unreasonable risk of
23 injury to health or environment? Is that the
24 same standard as TSCA 8(e) reporting?

25 A. No, it's not. TSCA 8(e) uses a

1 substantial risk standard.

2 Q. How is that different from
3 known to present an unreasonable risk of
4 injury under EPA TSCA guidance?

5 A. I guess in my experience and
6 interpretation of EPA requirements,
7 substantial risk would be a lesser standard
8 than known to present an unreasonable risk of
9 injury to health or the environment.

10 Q. And at the time that 3M was
11 responding to this TSCA, did they have an
12 understanding or belief as to whether the
13 chemical, PFOS, presented a substantial risk
14 to health or the environment based on the
15 data that it had obtained as of this time and
16 based on EPA guidance?

17 A. Based on my review of the
18 documents, 3M had concluded that the
19 information it had did not represent a
20 substantial risk to human health or the
21 environment related to PFOS.

22 Q. And specifically with respect
23 to the information that 3M had, did that
24 include -- I think you mentioned the
25 possibility that some portion of organic

1 fluorine found in general population samples
2 included PFOS?

3 A. My understanding is that 3M had
4 identified that possibility at the time.

5 VIDEOGRAPHER: Can we go off
6 record? It's the videographer.

7 MR. WOODS: Sure.

8 VIDEOGRAPHER: The time is
9 6:01 p.m., and we're off the record.

10 (Off the record at 6:01 p.m.)

11 VIDEOGRAPHER: The time is
12 6:17 p.m., and we're on the record.

13 QUESTIONS BY MR. WOODS:

14 Q. All right. Mr. Gerber, I
15 apologize for the delay here. I just have a
16 couple more questions for you.

17 You were asked some questions
18 by Mr. Douglas about a SNUR that was issued
19 by EPA in 2002 relating to perfluorooctanyl
20 chemistry.

21 Do you recall that?

22 A. Yes.

23 Q. And he asked you some questions
24 about the extent to which that SNUR limited
25 the production or import of those chemistries

1 into the United States.

2 Do you recall that?

3 A. I do.

4 Q. And I recall that you said you
5 weren't aware of a notice submitted under a
6 SNUR relating to continued import or
7 production of perfluorooctane sulfonate
8 chemistries; is that right?

9 A. Yes, that's correct, with -- I
10 guess to be specific, with a notice with
11 respect to something that had been defined as
12 a new use under the SNUR.

13 Q. And for purposes of your
14 deposition today, that's not a topic that you
15 researched to speak on behalf of the company;
16 is that right?

17 A. That's correct.

18 Q. And you haven't researched that
19 issue to determine whether, subsequent to the
20 issuance of the SNUR, there haven't been
21 companies that have continued to import or
22 produce perfluorooctane sulfonate
23 chemistries; is that fair?

24 A. Yes, I did not research that as
25 part of my preparation.

1 Q. And so you're not aware of it,
2 but that doesn't mean that there weren't any
3 producers of POSF-based products or importers
4 of POSF-based products subsequent to 2002,
5 correct?

6 A. Yeah, I -- I have not
7 researched that.

8 MR. WOODS: Okay. That's all
9 the questions I have. Thank you very
10 much, Mr. Gerber, for your time.

11 MR. MCWILLIAMS: I just have a
12 few questions, Mr. Gerber, and I
13 promise this'll be over real soon.
14 You're doing to a great job.

15 Okay?

16 THE WITNESS: All right.

17 REDIRECT EXAMINATION

18 QUESTIONS BY MR. MCWILLIAMS:

19 Q. All right. Did the lawyer for
20 3M, just in his questioning to you, did he
21 show you any documents indicating that 3M
22 notified the United States Environmental
23 Protection Agency prior to May of 1998 as to
24 the presence of PFOS in the blood of the
25 general population?

1 A. So that specific finding, to my
2 knowledge, is not -- not in the notices or
3 the documents that we reviewed.

4 Q. Did the lawyer for 3M show you
5 or discuss any documents that indicated to
6 you that prior to May of 1998, that 3M
7 notified the United States Environmental
8 Protection Agency as to the potential for
9 bioaccumulation with respect to PFOS?

10 A. Sorry, I'm trying to think of
11 the documents we've reviewed.

12 So I know there was publication
13 of the blood data. I don't -- I don't recall
14 that specific finding.

15 Q. Okay. Did Mr. Woods show you
16 or show the jury any evidence that prior to
17 May of 1998, 3M notified the United States
18 Environmental Protection Agency as to their
19 determination that PFOS was toxic to animals?

20 A. So there was the 8(e) notice
21 regarding the preliminary teratology studies
22 related to PFOS.

23 Q. I'm talking specifically with
24 respect to 3M's analysis of the rat, monkey
25 and mouse studies where they concluded that

1 PFOS is to be considered toxic.

2 Have you ever seen that
3 determination communicated to the US EPA
4 prior to May of 1998?

5 A. No. My understanding is that
6 3M determined that that was not substantial
7 risk information under EPA's current
8 guidance.

9 Q. And therefore did not report
10 that determination to the US EPA, fair?

11 A. That is my understanding.

12 Q. Okay. Now, Mr. Woods did show
13 you, and we can pull up 3M 4, a TSCA -- a
14 TSCA 8(e) submission from 1980 with respect
15 to the birth defects study, right, in rats?
16 In the lens of their eyes; is that right,
17 sir?

18 A. Yes.

19 Q. And in the bottom paragraph of
20 the first page, it makes a reference to this
21 1980 publication; is that right?

22 A. Yes.

23 Q. Okay. And the reason why 3M
24 sent this publication -- or brought the
25 publication to the attention of the US EPA

1 was to assuage EPA any concerns they might
2 have with respect to the potential toxicity
3 of these chemicals, right?

4 A. I guess I can't speak to the
5 state of the mind of the people that prepared
6 this notice.

7 Q. Okay. Well, let's look at it.
8 It says, "As noted on page 584 of this
9 article," and it gives the title, Preliminary
10 Report, "this publication and the attached
11 information reflects in part 3M's testing and
12 monitoring program."

13 Right?

14 A. Yes, I see that.

15 Q. "And to date, no human health
16 problems have been observed, nor disease
17 patterns detected."

18 Right?

19 A. Yes, I see that.

20 Q. It doesn't take a rocket
21 scientist to understand why 3M would have
22 sent that to EPA at that time, right?

23 A. So, again, I won't speculate on
24 the motivations of the people that submitted
25 this information.

1 Q. Okay. But they're saying that
2 this submission supports the fact that
3 there's no evidence of harm due to exposure
4 to these chemicals, right?

5 A. That's the conclusion that's
6 described here based on the observations in
7 workers.

8 Q. Okay. And let's look at that
9 paper. That's Exhibit 3M 5.

10 That's the Ubel 1980 paper; is
11 that right?

12 3M 5. There we go.

13 Do you see that, sir?

14 A. All right. I have that.

15 Q. And Dr. Ubel, he's a 3M
16 employee. He gets a paycheck every two weeks
17 from 3M. He's not some independent
18 scientist, is he?

19 A. My understanding is that he was
20 a 3M employee.

21 Q. All right. And he gets his
22 paycheck every two weeks, and he's going to
23 write a report on whether or not a 3M product
24 causes harm, right?

25 A. That's my understanding, he was

1 the author of this paper.

2 Q. Okay. But now this paper
3 studied 3M employees who were exposed to
4 PFOA, not PFOS, right?

5 A. Let -- let me review quick
6 here.

7 Q. If you want to turn to
8 page 6 -- or actually, I'm sorry.

9 And this specifically looked
10 for incidence of cancers, right, to see if
11 there's more than expected?

12 If you go to page 1, sir, of
13 the -- of the top right, it says, "We believe
14 it is now appropriate to report in a
15 preliminary way on blood organic fluorine
16 levels and the health status of a group of
17 chemical production workers at one chemical
18 plant which produces" what? What chemical
19 did they produce?

20 A. Ammonium perfluorooctanoate.

21 Q. That's PFOA, right?

22 A. Yeah, APFO, yes.

23 Q. Okay. That's not PFOS, right?

24 A. That's correct.

25 Q. Okay. Does this paper make any

1 reference of any way in any kind to PFOS?

2 A. As I discussed with Dr. Woods,
3 it does include by reference the study by Guy
4 and Taves that it identified organic fluorine
5 and identified -- you know, tentatively
6 identified those substances as PFOA or the
7 sulfonate salts.

8 Q. Okay. Sir, does the term
9 "PFOS" appear anywhere in this paper?

10 A. I don't believe so.

11 Q. Okay. Now, 3M believes that
12 this paper supports the proposition that
13 these chemicals don't increase one's risk of
14 cancer, right?

15 A. My understanding of the
16 conclusions of this study is that no adverse
17 health effects were observed.

18 Q. Including cancer. Cancers were
19 looked for, right?

20 A. I believe so.

21 Q. Okay. Sir, let me show you an
22 internal 3M memo where they discuss this
23 paper and what its findings mean.

24 Do you want to do that with me?

25 Sir, will you do that with me?

1 A. Sure.

2 (Gerber 30(b)(6) Exhibit DL1407
3 marked for identification.)

4 QUESTIONS BY MR. MCWILLIAMS:

5 Q. Okay. Let's pull up DL1407.

6 And I guess first, sir, do you
7 recognize this as a document you reviewed in
8 preparation for your deposition?

9 A. If you could allow me just a
10 moment to --

11 MR. ROTTENBERG: Tab 87, Jon.

12 THE WITNESS: Thank you.

13 Yes.

14 QUESTIONS BY MR. MCWILLIAMS:

15 Q. Okay. And so that was, yes,
16 this is a document you reviewed in
17 preparation for your deposition?

18 A. I believe so.

19 Q. And this is a memo dated --
20 internal 3M memo dated May 3, 1979?

21 A. Yes, it is.

22 Q. Again, they're talking about
23 the same two outside consultants we talked
24 about before, right?

25 A. Dr. Hodge and Dr. Mitchell?

1 Q. Uh-huh.

2 Okay. Let's go to the very
3 bottom of this page, the paragraph that
4 begins "Although Dr. Ubel's epidemiology
5 study."

6 Do you see that, sir?

7 A. Yes, I do.

8 Q. And Dr. Ubel is the author of
9 the epidemiology study that Mr. Woods just
10 discussed with you in his examination, right?

11 A. That's correct.

12 Q. Okay. Let's see what 3M -- how
13 3M characterized this paper internally.

14 They said, "Although Dr. Ubel's
15 epidemiology study is important and may tell
16 us if we are dealing with potent carcinogenic
17 chemicals - all evidence to date indicates we
18 are not - it will not be adequate to give
19 reasonable assurance that the fluorochemicals
20 are not carcinogenic because, 1, the database
21 is too small, only 1 to 200 deaths will be
22 tabulated; and 2, the exposure history, how
23 much, how many times, to what compounds, how
24 long ago, et cetera, is indefinite and can
25 really never be obtained."

1 Did I read that correctly, sir?

2 A. Yes.

3 Q. Now, and let's go back to 3M 4,
4 the TSCA submission where 3M brought to EPA's
5 attention this Ubel paper, this Ubel
6 epidemiology study, 3M 4, yeah.

7 And I want you to tell me, sir,
8 where in here I can find 3M's assessment that
9 this epidemiology study cannot give
10 reasonable assurance that these chemicals do
11 not cause cancer.

12 Tell me -- show the jury where
13 that was -- where that information was
14 provided to the United States Environmental
15 Protection Agency.

16 A. I don't see 3M's internal
17 analysis reflected here, but the study itself
18 was available to the Agency to make its own
19 independent determination.

20 Q. Okay. But the company that
21 published the study itself felt it couldn't
22 be used to prove that the compounds were
23 safe, and they never told the EPA that, did
24 they? Or any of the readers of the
25 publication, did they?

1 A. Based on the documents that
2 I've reviewed, 3M's internal analysis of the
3 study was -- was not -- was not published.

4 Q. Okay.

5 A. The study itself was.

6 Q. Okay. One of the last things
7 you discussed with Mr. Woods was that 3M may
8 have known that PFOS was in the blood of the
9 general population, but because you guys
10 didn't think it was harmful, you didn't have
11 an obligation to report it.

12 Is that fair?

13 A. My understanding based on the
14 documents that I've reviewed is that the lack
15 of observed health effects was a key
16 determinant in 3M's 8(e) reporting decisions.

17 Q. But, sir, don't people have a
18 right to know when a manmade chemical has
19 been put into their body without their
20 permission and the company that makes the
21 chemical has that information? Doesn't 3M
22 have an obligation, a moral duty, to disclose
23 that information?

24 A. That question is really outside
25 the scope of TSCA requirements. TSCA itself

1 is not a right-to-know law.

2 I'm aware there are, you
3 know -- that we rely on other frameworks for
4 right-to-know requirements and community
5 information. Beyond that, it's, you know,
6 individual company product stewardship
7 judgments and --

8 Q. Right. And I'm asking you for
9 your judgment, Mr. Gerber.

10 Don't people have a right to
11 know when a foreign substance is in their
12 body and the company that happens to make
13 that substance is aware of that information?

14 A. I think that -- and again, this
15 goes beyond, you know, the scope of my
16 responsibilities or my experience.

17 In my personal view, I think
18 that good risk communication is important and
19 that that's, you know, a situation-specific
20 determination.

21 MR. MCWILLIAMS: All right.

22 Okay. I agree. Thank you. That's
23 all the questions I have.

24 MR. WOODS: Anybody else?

25 MR. MCWILLIAMS: I think we're

1 done.

2 MR. WOODS: Okay. I think
3 we're done. Thank you, Mr. Gerber.

4 VIDEOGRAPHER: The time is
5 6:32 p.m., and we're off the record.

6 (Deposition concluded at 6:32 p.m.)

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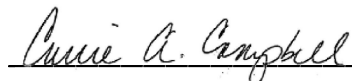
25

CERTIFICATE

I, CARRIE A. CAMPBELL, Registered
Diplomate Reporter, Certified Realtime
Reporter and Certified Shorthand Reporter, do
hereby certify that prior to the commencement
of the examination, Jon Gerber, was duly
sworn by me to testify to the truth, the
whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the
foregoing is a verbatim transcript of the
testimony as taken stenographically by and
before me at the time, place and on the date
hereinbefore set forth, to the best of my
ability.

I DO FURTHER CERTIFY that I am
neither a relative nor employee nor attorney
nor counsel of any of the parties to this
action, and that I am neither a relative nor
employee of such attorney or counsel, and
that I am not financially interested in the
action.



CARRIE A. CAMPBELL,
NCRA Registered Diplomate Reporter
Certified Realtime Reporter
Notary Public

Dated: August 25, 2021

1 INSTRUCTIONS TO WITNESS

2

3 Please read your deposition over
4 carefully and make any necessary corrections.
5 You should state the reason in the
6 appropriate space on the errata sheet for any
7 corrections that are made.

8 After doing so, please sign the
9 errata sheet and date it. You are signing
10 same subject to the changes you have noted on
11 the errata sheet, which will be attached to
12 your deposition.

13 It is imperative that you return
14 the original errata sheet to the deposing
15 attorney within thirty (30) days of receipt
16 of the deposition transcript by you. If you
17 fail to do so, the deposition transcript may
18 be deemed to be accurate and may be used in
19 court.

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ACKNOWLEDGMENT OF DEPONENT

I, _____, do
hereby certify that I have read the foregoing
pages and that the same is a correct
transcription of the answers given by me to
the questions therein propounded, except for
the corrections or changes in form or
substance, if any, noted in the attached
Errata Sheet.

Jon Gerber

Date

Subscribed and sworn to before me this
_____ day of _____, 20 ____.

My commission expires: _____

Notary Public

1			- - - - -
			ERRATA
2			- - - - -
3	PAGE	LINE	CHANGE/REASON
4	_____	_____	_____
5	_____	_____	_____
6	_____	_____	_____
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LINE
